10

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 174.

KAIMIOLA NAKOOKOO GRAY, APPELLANT,

vs.

DAVID NOHOLOA.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF HAWAII.

FILED SEPTEMBER 9, 1907.

(20,849.)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

IN THE MATTER OF THE ESTATE OF HIKAALANI HOBRON NOHOLOA, Deceased. } Petition for Letters of Administration.

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TRANSCRIPT OF RECORD.

(1) IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, TERRITORY OF HAWAII.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Hikaalani Hobron Noholoa (w), deceased. } Petition for Letters of Administration. (Original Stamped $2.00.)

To the Honorable A. N. Kepoikai, Judge of the Circuit Court of the Second Judicial Circuit, Territory of Hawaii:

Your Petitioner, Kainiola Nakookoo Gray, of Kalaupapa, County of Kalawao, Island of Molokai, Territory of Hawaii, humbly praying respectfully shows and presents:

I.

That Hikaalani Hobron Noholoa (w) of Kalaupapa, County of Kalawao, Island of Molokai, Territory of Hawaii, died on or about the 29th day of June, A. D. 1906, being at the time of her death a resident of said Kalaupapa and leaving estate within the jurisdiction of this Court.

II.

That your petitioner is a resident of said Kalaupapa and by relation a niece and heir at law of said deceased.

III.

That due search and inquiry have been made to ascertain if said deceased left any last will and testament but none has been found except a certain paper writing purporting to be the last will and testament of the said deceased and purporting to have been signed by said deceased with her mark, to wit, a cross mark, and with Fannie H. Babcock and J. K. Waiamau as subscribing witnesses thereto, of date the 18th day of November, A. D. 1901, wherein and whereby said deceased did devise and bequeath unto her husband David Noholoa, a resident

(2) of said Kalaupapa, all property of which she died possessed of whatsoever kind or nature situate within

end at said Kalaupapa aforesaid. And said purported will has been offered for probate by petition of the said David Nohoka dated the 13th day of September, A. D. 1906, addressed to the Honorable the Judge of the Circuit Court of the Second Judicial Circuit, now on file with the Clerk of said Circuit Court. That said deceased left estate other than property within and at said Kalaupapa, to wit, real estate within the District commonly known as Waikiki, in the Judicial District of Honolulu and within the Judicial Circuit comprising the Island and County of Oahu, as follows: to wit, land at Kalia, Honolulu, Island and County of Oahu, described in R. P. 3441, L. C. A. 2541 to Alapai; land at Kalia, described in R. P. 3049 L. C. A. 2033 to Umi; the assessed value of both of which is the sum of three thousand dollars ($3,000.00); land in Kamoiliili, Honolulu, the assessed value of which is four hundred dollars ($400.00); also personalty, to wit, cash in the hands of J. A. Magoon, a resident of said Honolulu, the same being accumulated cash accrued from rents of the real estate aforementioned collected prior to the death of said deceased. That said land is under and subject to a lease for a term of years unexpired, the reserved rent thereof being the sum of three hundred and forty dollars ($340.00) per year. That there is now no person who can lawfully demand any settlement with the said J. A. Magoon for the property now in his custody. That according to the best knowledge and belief of your petitioner said deceased died intestate as to said realty and accumulated cash.

(3) IV.

That the heirs of said deceased known to your petitioner are Kaimiola Nakookoo Gray, adult residing at said Kalaupapa, your petitioner herein, and niece of said deceased; Sarah Nakookoo, born May 6th, 1893, grand niece of said deceased; and Amy Helen Nakookoo, born May 19th, 1895, another grand niece of said deceased, both grand nieces being minors and residing in Honolulu.

Wherefore, your petitioner prays that Henry Smith or some other suitable person may be appointed administrator of the said estate, concerning which decedent died intestate and that due notice be given to all persons interested to appear at such time and place as this court may direct to show cause if any they have why the prayer of this petition should not be granted.

(Sgd) KAIMIOLA NAKOOKOO GRAY X her mark

Subscribed and sworn to before me this 25th day of October, A. D. 1906.

(Sgd) W. A. BRUNS.

(Seal) Notary Public Second Judicial Circuit of the Territory of Hawaii.

(4) IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, TERRITORY OF HAWAII.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Hikaalani Hobron Noholoa, deceased.

Order of Notice of Hearing Petition for Administration.

On reading and filing the Petition of Kaimiola Nakookoo Gray, of Kalaupapa, Island of Molokai, County of Kalawao, Territory of Hawaii, alleging that Hikaalani Hobron Noholoa, of said Kalaupapa, died at said Kalaupapa on the 29th day of June, A. D. 1906, leaving a purported last will and testament thereby disposing of all her property at said Kalaupapa situate, but dying intestate as to certain other property belonging to said decedent of which she died possessed situated elsewhere than at said Kalaupapa, to wit: in the District of Honolulu, Island and County of Oahu, Territory of Hawaii, necessary to be administered upon, and praying that letters of administration issue to Henry Smith or some other suitable person:

It is ordered that Wednesday, the 12th day of December, A. D. 1906, at 10 o'clock A. M., be and hereby is appointed for hearing said petition in the Court Room of this Court at Wailuku, at which time and place all persons concerned may appear and show cause if any they have why said Petition should not be granted, and that notice of this order be published in the English language for three successive weeks in the "Pacific

Commercial Advertiser," a daily newspaper printed and published in Honolulu, Oahu.

Dated at Wailuku, this 1st day of Nov., A. D. 1906.

(5) (Sgd) A. N. KEPOIKAI,
Judge Circuit Court of the Second Circuit.

Attest:
(Sgd) EDMUND H. HART,
Clerk Circuit Court Second Circuit.
Nov. 5-12-19-26.

(6) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT,
TERRITORY OF HAWAII.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Hikualani Hobron Noholoa. } Affidavit of Publication.

Territory of Hawaii, }
Island and County of Oahu. } ss.

Edward Dekum being duly sworn, deposes and says, that he is the Adv. Manager of the Pacific Commercial Advertiser, a newspaper published in Honolulu, Island and County of Oahu and Territory of Hawaii, and that the Order of Notice of Hearing Petition for administration in the above entitled cause of which copy the annexed is a true and correct copy, and which was published four times in the Pacific Commercial Advertiser aforesaid, commencing on the (5) fifth day of Nov., 1906, and ending on the (26) twenty-sixth day of Nov., 1906, both days inclusive, to wit, on the 5-12-19-26 of November, 1906, and that affiant is not a party to or in anyway interested in the above entitled cause.

(Sgd) EDWARD DEKUM.

Subscribed and sworn to before me this
28th day of November, A. D. 1906.

(Sgd) J. A. THOMPSON,
Clerk First Circuit Court.

(6½) IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, TERRITORY OF HAWAII.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Hikaalani Hobron Nohoboa, deceased.

Order of Notice of Hearing Petition For Administration.

On reading and filing the petition of Kaimiola Nakookoo Gray of Kalaupapa, Island of Molokai, County of Kalawao, Territory of Hawaii, alleging that Hikaalani Hobron Nohoboa of said Kalaupapa died at said Kalaupapa on the 29th day of June, A. D. 1906, leaving a purported Last Will and Testament, thereby disposing of all her said property at said Kalaupapa situate, but dying intestate as to certain other property belonging to said decedent of which she died possessed, situate elsewhere than at said Kalaupapa, to wit: in the District of Honolulu, Island and County of Oahu, Territory of Hawaii, necessary to be administered upon, and praying that letters of administration issue to Henry Smith or some other suitable person;

It is ordered, that Wednesday, the 12th day of December, A. D. 1906, at 10 o'clock A. M., be and hereby is appointed for hearing said petition, in the court room of this court at Wailuku, at which time and place all persons concerned may appear and show cause, if any they have, why said petition should not be granted, and that notice of this order be published in the English language for three successive weeks in the Pacific Commercial Advertiser, a daily newspaper printed and published in Honolulu, Oahu.

Dated at Wailuku, this 1st day of November, A. D. 1906.

A. N. KEPOIKAI,

(Seal) Judge Circuit Court, Second Circuit.

Attest:

EDMUND H. HART,
Clerk Circuit Court, Second Circuit.

7564—Nov. 5, 12, 19, 26

(7) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT. TERRITORY OF HAWAII.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Hikaalani Hobron Noholoa, late of Kalaupapa, Molokai, deceased. } Before Kepoikai, Judge. Petition for Appointment of Administrator.

Proceedings had December 12, 1906.

Court opened at 10 o'clock A. M., pursuant to notice of hearing.

All parties interested were called.

E. C. Peters, Esq., for petitioner.

Holmes and Stanley for David Noholoa, devisee under the Will, and for Enoch Johnson, Administrator-with-the-Will-Annexed of Hikaalani Noholoa, deceased.

Mr. Peters reads the petition, order of notice of hearing, and affidavit of publication.

Mr. Peters offers Probate Record No. 1568, Second Circuit Court, being the record in re Proof of Will of Mrs. David Noholoa alias Hikaalani Noholoa, deceased, which Will was this day admitted to probate, and more especially that portion thereof pertaining to the appointment of a commissioner to take testimony, order of appointment, commission, interrogatories to the several witnesses, and their depositions, certificate of death, Will and translation thereof as made by the Court, together with the evidence of Enoch Johnson, the same to be incorporated into this hearing as part of the evidence herein.

Piikoi Okuu, sworn, states:

Piikoi Okuu is my name. I live in Honolulu, Oahu. I knew Hikaalani in her lifetime. She had a brother named
(8) Nakookoo. Nakookoo married Kapahuaniani and had issue several children, Kaimioda (w), living; Kahune (k), dead. Kahune married Esther and had issue Sarah and Helen, both are living, minors. Esther is dead.

Enoch Johnson, sworn, states:

Enoch Johnson is my name. I have been informed that there is some property of deceased in the hands of J. A. Magoon. I have no idea how much it is—he never told me.

E. C. Peters, sworn, states.

I have been informed that there is money of deceased in the hands of J. A. Magoon, amounting to $500 and over. Mr.

Peters asks that the prayer of the petition be granted. Mr. Stanley opposes the granting of the petition, as all of the property of the estate is conveyed by the Will, which has just been admitted to Probate.

Mr. Stanley argues, and Mr. Peters answers.

The Court:

Petition denied.

Mr. Peters excepts to the order of the Court, and gives notice of his appeal.

EDMUND H. HART,
Clerk.

(Seal)

(9) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT, TERRITORY OF HAWAII.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Mrs. David Noholoa, alias Hikaalani Noholoa (w), late of Kalaupapa, Island of Molokai. } Petition for Probate of Will. Original Stamped $2.00.

To the Honorable A. N. Kepoikai, Judge of the Circuit Court of the Second Circuit:

Your Petitioner, David Noholoa, of the Leper Settlement at Kalaupapa, Molokai, County of Maui, herewith presents to this Court the Last Will and Testament of Mrs. David Noholoa, alias Hikaalani Noholoa, deceased, and showeth as follows:

That said Mrs. David Noholoa alias Hikaalani Noholoa (w) died in the said Leper Settlement at Kalaupapa, Molokai, on or about the 29th day of June, A. D. 1906, being at that time a resident of the said Leper Settlement, Kalaupapa, and leaving estate in the said Territory of Hawaii, the probable value and character of which are as follows, viz:

Real Estate: Land at Kalia, Honolulu, County of Oahu, in said Territory of Hawaii, described in Royal Patent 3441, L. C. Award 2511 to Alapai: Land at Kalia, described in Royal Patent 3649, L. C. Award 2033 to Umi: Land at Kamoiliili, in said Honolulu, and valued at $3,100.00.

Personal Property consisting of 1 Puakea horse, 1 bay mare, 1 black mare, 1 wooden house and other buildings, and valued at $600.00.

(10) That when said Will was executed the said Mrs. David Noholoa alias Hikaalani Noholoa was of the age of 70 years and upward, of sound mind, and in every respect competent to make and publish a Will and Testament.

That said deceased left a husband living, and as her heirs at law and next of kin the persons whose names, residences and relationship are as follows, viz:

David Noholoa, at the Leper Settlement, husband.
Iniola (w), " " " " niece.

That in said Will David Noholoa named as Devisee and Legatee, and none as Executor.

Wherefore your Petitioner prays, that said Will may be admitted to Probate, and Letters of Administration with the Will Annexed be issued to Enoch Johnson, and that this Honorable Court will therefore appoint a day for hearing and order notice of the same to be given by publication to all persons interested therein.

Dated at the Leper Settlement, Molokai, County of Maui, 1906.

(Sgd) DAVID NOHOLOA.

Subscribed and sworn to before me this 13th day of September, 1906.

(Sgd) W. A. BRUNS.
(Seal) Notary Public Second Judiciai Circuit.

(11) In the Circuit Court of the Second Circuit, Territory of Hawaii.

At Chambers. In Probate.

In the Matter of the Estate of Mrs. David Noholoa, alias Hikaalani Noholoa, late of Kalaupapa, Molokai, deceased. } Order for Notice of Hearing Petition for Probate of Will.

A document purporting to be the Last Will and Testament of Mrs. David Noholoa alias Hikaalani Noholoa, late of Kalaupapa, Molokai, deceased, having on the 19th day of September, A. D. 1906, been presented to said Probate Court, and a petition for the Probate thereof, and for the Issuance of Letters Testamentary to Enoch Johnson, having been filed by David Noholoa, husband of said deceased:

It is hereby ordered that Wednesday, the 24th day of October, A. D. 1906, at 10 o'clock A. M. of said day, at the Court Room of said Court at Lahaina, Maui, in case said Court be then holding Court at said Lahaina, otherwise at the Court Room in Wailuku, Maui, on the same day and hour, be and the same hereby is appointed the time and place for proving said Will and hearing said application.

It is further ordered, that notice thereof be given, by publication once a week for three successive weeks, in the "Evening Bulletin," a daily newspaper published in the English language, the last publication to be not less than ten days previous to the time therein appointed for hearing.

(Sgd) A. N. KEPOIKAI,
Judge of the 2nd Circuit Court.

Attest:

(12) (Sgd) EDMUND H. HART, Clerk.

Dated at Wailuku, Maui, September 19th, 1906.

Sept. 20, 27, Oct. 4 and 11:

(Seal)

(13) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Mrs. David Noholoa alias Hikaalani Noholoa (w) deceased.

Motion for a Commission to Take Testimony.

Now comes E. C. Achi, Esq., Attorney for David Noholoa, the Petitioner in the above entitled cause, and shows that the said Petitioner, David Noholoa, Fannie H. Babcock and J. K. Waiamau are now residing in the Leper Settlement, at Kalaupapa, Island of Molokai; that their evidence is necessary for the admission to Probate the Last Will and Testament of said Mrs. David Noholoa alias Hikaalani Noholoa (w), deceased, now on file in this Court, and for which a petition was filed in this Court, praying for the admission to Probate of said Will.

Wherefore, he prays this Honorable Court that a commission may be ordered to issue to J. D. McVeigh, Esq., of the said Leper Settlement, to take the evidence of the petitioner, David Noholoa, Fannie H. Babcock and J. K. Waiamau.

The foregoing motion is based upon the affidavit of Enoch Johnson hereto attached, and made a part hereof, the records and all pleadings in the above entitled cause.

Dated Honolulu, Sept. 17th, A. D. 1906.

(Sgd) W. C. ACHI,
Attorney for Petitioner.

Honolulu, Oahu,)
Territory of Hawaii.) ss.

Now comes W. C. Achi, Attorney for Petitioner, and on oath deposes and says that the statements in the above motion are true to the best of his knowledge.

(Sgd) W. C. ACHI.

(14) Subscribed and sworn to before me this 17th day of Sept., A. D. 1906.

(Sgd) P. SILVA,

(Seal) Notary Public First Judicial Circuit.

(15) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of)
Mrs. David Noholoa alias Hi-)
kaalani Noholoa (w) deceased.)

Affidavit of Enoch Johnson.

Now comes Enoch Johnson, and on oath deposes and says, that he is acquainted with David Noholoa and J. K. Waiamau; that they formerly resided in the City of Honolulu, County of Oahu, and at present reside in the Leper Settlement, at Kalaupapa, Island of Molokai; that affiant is informed and believes and upon such information and belief avers that Fannie H. Babcock is also residing at the said Leper Settlement; that they are lepers who were removed and detained by the Board of Health of the Territory of Hawaii at the said Leper Settlement; that the said Fannie H. Babcock and J. K. Waiamau are subscribing witnesses to the Last Will and Testament of said Mrs. David Noholoa alias Hikaalani Noholoa (w), deceased, now on file in this Court; that said Fannie H. Babcock,

J. K. Waiamau and David Noholoa are necessary witnesses for the admission to Probate of said Will; that on account of their said detention they are unable to appear in persons before this Honorable Court.

(Sgd) ENOCH JOHNSON.

Subscribed and sworn to before me this
19th day of September, A. D. 1906.

(Sgd) EDMUND H. HART,
(Seal) Clerk Second Circuit Court.

(16) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Mrs. David Noholoa alias Hikaalani Noholoa (w) deceased.

Order.

Upon reading and filing the Motion made by W. C. Achi, Esq., the Attorney for the Petitioner herein, praying for a Commission to be issued to J. D. McVeigh, Esq., of the Leper Settlement, at Kalaupapa, Island of Molokai, to take deposition of David Noholoa, the Petitioner herein, Fannie H. Babcock and J. K. Waiamau, residing at the said Leper Settlement, the subscribing witnesses to the Last Will and Testament of Mrs David Noholoa alias Hikaalani Noholoa (w), deceased, and upon reading the affidavit of Enoch Johnson; it is hereby ordered, adjudged and decreed that a Commission be issued to the said J. D. McVeigh, Esq., of Kalaupapa, Island of Molokai, to take the deposition of the said David Noholoa, Fannie H. Babcock and J. K. Waiamau, upon the direct interrogatories filed herewith and such cross interrogatories as may be filed herein within twenty days from the date hereof and such redirect interrogatories may be filed herein within..... days thereafter; and that such deposition may be read in evidence upon the hearing of said cause; subject to all legal objections as to the admissibility of the testimony.

Wailuku, Sept. 19th, 1906.

(Sgd) A. N. KEPOIKAI,
(Seal) Judge of the Circuit Court of Second Circuit.

(17) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT, TERRITORY OF HAWAII.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Mrs. David Noholoa alias Hikaalani Noholoa (w) deceased.

Commission to Take Testimony.

The Territory of Hawaii
To J. D. McVeigh, Esq.,
Leper Settlement, Kalaupapa, Molokai.

Greeting:

Whereas it appears to our Judge of the Circuit Court of the Second Circuit, Territory of Hawaii, that David Noholoa, Fannie H. Babcock and J. K. Waiamau, of Kalaupapa aforesaid, are material witnesses in the matter of the Estate of Mrs. David Noholoa alias Hikaalani Noholoa, deceased, and that the personal attendance of said witnesses cannot be procured at the trial of said matter;

We, in confidence of your prudence and fidelity, and pursuant to an order for a commission to take testimony made upon a motion filed herein, have appointed you and by these presents, you are hereby given full authority, diligently to examine David Noholoa, the Petitioner in the above entitled cause; Fannie H. Babcock and J. K. Waiamau, the subscribing witnesses to the Last Will and Testament of the said Mrs. David Noholoa alias Hikaalani Noholoa (w), deceased, residing in the said Leper Settlement, witnesses herein, upon the direct Interrogatories hereto annexed on a certain day and place to be appointed by you, and having first administered oaths to said wit-

(18) nesses you will reduce their answers to writing, and get them to sign it, and return the same with said Interrogatories, this Commission, and the Will to the Clerk of said Court.

Wailuku, Sept. 19th, 1906.

By the Court:

(Sgd) EDMUND H. HART,

(Seal) Clerk.

(19) In the Circuit Court of the Second Circuit.

At Chambers. In Probate.

In the Matter of the Estate of Mrs. David Nohoiloa alias Hikaalani Nohoiloa (w) deceased.

Direct Interrogatories to Petitioner.

1. State your name and place of residence?
2. State whether you are unable to appear in person before the above mentioned court on account of your position as a leper.
3. Do you know Mrs. David Nohoiloa alias Hikaalani Nohoiloa?
4. Was she your wife?
5. Is she dead, and when?
6. Did you see her dead body?
7. How old she was when she died?
8. Did you know that she made a will before her death?
9. Is this the Will?
10. Who kept it after it was executed?
11. Do you know if she made a will later than this will?
12. Who were the witnesses to the Will?
13. What was the mental condition of Mrs. David Nohoiloa when she made the Will?
14. After her death what did you do with the Will?
15. What is the value of the personal property of Mrs. David Nohoiloa?
16. Who do you want to be appointed administrator with the will annexed?

(20) In the Circuit Court of the Second Circuit, Territory of Hawaii.

At Chambers. In Probate.

In the Matter of the Estate of Mrs. David Nohoiloa alias Hikaalani Nohoiloa (w) deceased.

Direct Interrogatories to Fannie H. Babcock.

1. State your name and place of residence.
2. State whether you are unable to appear in person before

the above mentioned court on account of your detention at the Leper Settlement.

3. Did you know Mrs. David Noholoa alias Hikaalani Noholoa?

4. Is she still alive or dead?

5. If died, when?

6. Did you see her dead body?

7. Are you a witness to her Will?

8. Is this the Will that you signed as a witness?
(Showing the Will to the witness.)

9. Is this your name?
(Showing the Will to the witness.)

10. Who drew the Will if you knew?

11. Where the Will was drawn?

12. Was the Will read to her, and by whom?

13. Did she approve it?

14. Were you in her presence when she made her mark?

15. Who wrote her name if you knew?

16. Who put the cross mark after the name, if you knew?

17. Did she put her hand on the hand of the per-
(21) son who put down the cross mark, if you knew?

18. Who asked you to be a witness to the Will?

19. Who is the other subscribing witness to the Will?

20. Did you sign your name on the Will in the presence of Hikaalani Noholoa, and in the presence of J. K. Waiamau, the other subscribing witness?

21. Did Mrs. David Noholoa alias Hikaalani Noholoa sign the Will in your presence, and in the presence of J. K. Waiamau?

22. Did J. K. Waiamau sign his name as witness to the Will in your presence, and in the presence of Mrs. David Noholoa?

23. Was Mrs. David Noholoa of sound mind and capable to make contract when she made the Will?

24. After she signed the Will, who took care of it, if you knew?

(22) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Mrs. David Noholoa alias Hikaalani Noholoa (w) deceased.

Direct Interrogatories to J. K. Waiamau.

1. State your name and place of residence.
2. State whether you are unable to appear in person before the above mentioned court on account of your detention at the leper settlement.
3. Did you know Mrs. David Noholoa alias Hikaalani Noholoa?
4. Is she still alive or dead?
5. If died, when?
6. Did you see her dead body?
7. Are you a witness to her Will?
8. Is this the Will that you signed as a witness?
(Showing the will to the witness.)
9. Is this your name?
(Showing the will to the witness.)
10. Who drew the Will if you knew?
11. Where the Will was drawn?
12. Was the Will read to her, and by whom?
13. Did she approve it?
14. Were you in her presence when she made her mark?
15. Who wrote her name if you knew?
16. Who put the cross mark after the name if you knew?
17. Did she put her hand on the hand of the person who put down the cross mark if you knew?
18. Who asked you to be a witness to the Will?

(23) 19. Who is the other subscribing witness to the Will?

20. Did you sign your name on the Will in the presence of Hikaalani Noholoa, and in the presence of Fannie H. Babcock, the other subscribing witness?
21. Did Mrs. David Noholoa alias Hikaalani Noholoa sign the Will in your presence, and in the presence of Fannie H. Babcock?
22. Did Fannie H. Babcock sign her name as witness to the Will in your presence, and in the presence of Mrs. David Noholoa?

23. Was Mrs. David Noholoa of sound mind and capable to make contract when she made the Will?

24. After she signed the Will, who took care of it, if you knew?

(24) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT, TERRITORY OF HAWAII.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Mrs. David Noholoa alias Hikaalani Noholoa (w) deceased.

Deposition of David Noholoa, the Petitioner in the above entitled cause, a witness produced, sworn and examined on the twenty-sixth day of September, in the year one thousand nine hundred and six, at the leper settlement, at Kalaupapa, Island of Molokai, County of Maui, under and by virtue of a commission issued out of the above mentioned Court, in the matter of the Estate of Mrs. David Noholoa, alias Hikaalani Noholoa (w), deceased, therein pending, being first duly sworn, in accordance with the directions set forth in the commission hereto attached, and examined as a witness in his part, doth depose and say, as follows:

To the first interrogatory he sayeth:
David Noholoa, Kalaupapa, Molokai.
To the second interrogatory he sayeth:
Yes. I was sent here as a leper June 4th, 1898.
To the third interrogatory, he sayeth:
Yes.
To the fourth interrogatory, he sayeth:
Yes.
To the fifth interrogatory, he sayeth:
Yes. She died June 29th, 1906.
To the sixth interrogatory he sayeth:
Yes.
To the seventh interrogatory he sayeth:
Seventy-five.
(25) To the eighth interrogatory, he sayeth:
Yes.
To the ninth interrogatory, he sayeth:
Yes.
To the tenth interrogatory, he sayeth:
Myself.

To the eleventh interrogatory, he sayeth:
I do not know of her making any other Will.
To the twelfth interrogatory, he sayeth:
Fannie H. Babcock, J. K. Waiamau.
To the thirteenth interrogatory, he sayeth:
Yes. She was of sound mind at time of making this Will.
To the fourteenth interrogatory, he sayeth:
I sent the Will to my brother Enoch Johnson to have it probated.
To the fifteenth interrogatory, he sayeth:
About six hundred dollars.
To the sixteenth interrogatory, he sayeth:
Enoch Johnson.

(Sgd) D. NOHOLOA.

Subscribed and sworn to before me this 26th day of September, A. D. 1906.

(Sgd) J. D. McVEIGH,
Commissioner.

(26) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT, TERRITORY OF HAWAII.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Mrs. David Noholoa alias Hikaalani Noholoa (w) deceased.

Deposition of Fannie H. Babcock, a witness produced, sworn and examined on the 26th day of September in the year one thousand nine hundred and six, at the leper settlement, at Kalaupapa, Island of Molokai, under and by virtue of a commission issued out of the above mentioned Court, in the matter of the Estate of Mrs. David Noholoa alias Hikaalani Noholoa (w) deceased therein pending, being first duly sworn, in accordance with the directions set forth in the commission hereto attached, and examined as a witness on behalf of the petitioner, doth depose and say, as follows:
To the first interrogatory, she sayeth:
Fannie H. Babcock, Kalaupapa, Molokai.
To the second interrogatory, she sayeth:
I am unable to appear.
To the third interrogatory, she sayeth:
Yes.

To the fourth interrogatory, she sayeth:
She is dead.
To the fifth interrogatory, she sayeth:
She is dead. I do not remember exact date.
To the sixth interrogatory, she sayeth:
Yes.

To the seventh interrogatory, she sayeth:

(27) I witnessed a will made at Kalaupapa conveying her personal property only.

To the eighth interrogatory, she sayeth:
I believe so.
To the nineth interrogatory, she sayeth:
Yes.
To the tenth interrogatory, she sayeth:
J. K. Waiamau.
To the eleventh interrogatory, she sayeth:
At my residence, Kalaupapa, Molokai.
To the twelfth interrogatory, she sayeth:
To the best of my recollection the Will was read to her by J. K. Waiamau.
To the thirteenth interrogatory, she sayeth:
Yes.
To the fourteenth interrogatory, she sayeth:
It is so long ago I do not remember.
To the fifteenth interrogatory, she sayeth:
I do not remember.
To the sixteenth interrogatory, she sayeth:
I do not know who put the X mark.
To the seventeenth interrogatory, she sayeth:
I do not know.
To the eighteenth interrogatory, she sayeth:
Mrs. Hikaalani Noholoa.
To the nineteenth interrogatory, she sayeth:
J. K. Waiamau.
To the twentieth interrogatory, she sayeth:
Yes.
To the twenty-first interrogatory, she sayeth:
I know her intention was to leave all her property in the settlement to D. Noholoa. Whether she signed her

(28) name or made X I don't remember.

To the twenty-second interrogatory, she sayeth:
Yes.
To the twenty-third interrogatory, she sayeth:
Yes.

To the twenty-fourth interrogatory, she sayeth:
After Will was signed Mrs. Noholoa took will in charge herself.

(Sgd) FANNIE H. BABCOCK.

Subscribed and sworn to before me this
26th day of September, A. D. 1906.

(Sgd) J. D. McVEIGH,
Commissioner.

(29) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT, TERRITORY OF HAWAII.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Mrs. David Noholoa alias Hikaalani Noholoa (w) deceased.

Deposition of J. K. Waiamau, a witness produced, sworn and examined on the 26th day of September in the year One Thousand Nine Hundred and Six, at the leper settlement, at Kalaupapa, Island of Molokai, County of Maui, under and by virtue of a commission issued out of the above mentioned court, in the matter of the Estate of Mrs. David Noholoa alias Hikaalani Noiuoloa (w), deceased, therein pending, being first duly sworn, in accordance with the directions set forth in the commission hereto attached, and examined as a witness on behalf of the Petitioner, doth depose and say, as follows:

To the first interrogatory, he sayeth:
J. K. Waiamau, Kalaupapa, Molokai.
To the second interrogatory, he sayeth:
I am unable to appear.
To the third interrogatory, he sayeth:
Yes.
To the fourth interrogatory, he sayeth:
Dead.
To the fifth interrogatory, he sayeth:
No.
To the sixth interrogatory, he sayeth:
Yes.
To the seventh interrogatory he sayeth:
Yes.

(30) To the eighth interrogatory, he sayeth:
Yes.
To the nineth interrogatory, he sayeth:
Yes.
To the tenth interrogatory, he sayeth:
I drew will at her request.
To the eleventh interrogatory, he sayeth:
At Mrs. Babcock's resitence, Kalaupapa.
To the twelfth interrogatory, he sayeth:
Yes, by myself.
To the thirteenth interrogatory, he sayeth:
Yes.
To the fourteenth interrogatory, he sayeth:
Yes.
To the fifteenth interrogatory, he sayeth:
I wrote her name for her.
To the sixteenth interrogatory, he sayeth:
I made X with her hand resting on mine.
To the seventeenth interrogatory, he sayeth:
Yes.
To the eighteenth interrogatory, he sayeth:
Mrs. David Noholoa.
To the nineteenth interrogatory, he sayeth:
Mrs. Fannie H. Babcock.
To the twentieth interrogatory, he sayeth:
Yes, in presence of both.
To the twenty-first interrogatory, he sayeth:
Yes.
To the twenty-second interrogatory, he sayeth:
Yes.
To the twenty-third interrogatory, he sayeth:
(31) Yes.
To the twenty-fourth interrogatory, he sayeth:
Mrs. Noholoa took charge of Will.

(Sgd) J. K. WAIAMAU.

Subscribed and sworn to before me this
26th day of September, A. D. 1906.

(Sgd) J. D. McVEIGH,
Commissioner.

(32) REPORT OF DEATHS.

DISTRICT OF KALAUPAPA, ISLAND OF MOLOKAI.

Date of Death, June 29th, 1906.
Name of deceased, Hikaalani Hobron.
Sex, Female; Age, 62 Years, ——— Months, ——— Days.
Married or Single, Married. Nationality, Hawaiian.
Place of Birth ————————.
Place of Death, Kalaupapa, Molokai.
Duration of last illness ———— Years; ———— Months; ———— Days.
Cause of Death, Senile Paresis.
Consulting Physicians ————————.
Post Mortem by ————————.
Coroner's Inquest ————————.
Investigated by ————————.
Attending Physician, Dr. W. J. Goodhue.
Cemetery or Place where burried, Hiopu, Kalaupapa, Molokai.
Resident or non-resident, resident.
Information given by Ho Kee.
Recorded this 29th day of June, 1906, at Kalaupapa, Island of Molokai.

(Sgd.) J. K. WAIAMAU, Registrar.

Copy sent to the office of Board of Health.
Kalaupapa, June 30th, 1906.

(33) Leper Settlement, Kalaupapa, Island of Molokai, Second Circuit, Territory of Hawaii. } ss.

I, J. D. McVeigh, a Commissioner duly appointed by the Hon. A. N. Kepoikai, Circuit Judge of the Second Circuit, Territory of Hawaii, in the matter of the Estate of Mrs. David Noholoa alias Hikaalani Noholoa, deceased, do hereby certify that the witnesses, David Noholoa, J. K. Waiamau and Fannie H. Babcock, in the depositions hereto attached, and made parts of this Certificate, were by me duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that said depositions were taken at the time and place mentioned in the annexed depositions, to wit, at my office at the leper settlement, in Kalaupapa aforesaid, and on the 26th day of Sept., A. D. 1906, between the hours of 9 and eleven of that day; that

said depositions were reduced to writing by me, and when complete were by me carefully read to each of said witnesses; and being by each of them corrected, were by each of them subscribed in my presence.

In Witness Whereof, I have hereunto subscribed my name and affixed my seal of office this 26th day of September, A. D. 1906.

(Sgd) J. D. McVEIGH,
Commissioner to take testimony in the matter of the Estate of Mrs. David Noholoa alias Hikaalani Noholoa, deceased.

(34) In the Circuit Court of the Second Circuit, Territory of Hawaii.

At Chambers. In Probate.

In the Matter of the Estate of Hikaalani Noholoa (w), late of Kalaupapa, Molokai, deceased. } Order of Probate.

On this 12th day of December, 1906, before me, Circuit Judge of said Court, came on to be heard the petition of David Noholoa, of Kalaupapa, Island of Molokai, praying that a document, alleged to be the last Will and Testament of said deceased, be admitted to Probate, and that Letters of Administration with the Will Annexed be granted to Enoch Johnson of Honolulu, Island of Oahu.

And it appearing that sufficient notice of this hearing has been given to all parties concerned, the Court finds the following facts from the evidence adduced:

That said Hikaalani Noholoa died on or about the 29th day of June, 1906, at Kalaupapa aforesaid; that said alleged will was executed by her on the 18th day of November, 1901, at Kalaupapa, in the presence of Fannie H. Babcock and J. K. Waiaman as subscribing witnesses; that said testatrix at the time of the execution of the said Will was of sound and disposing mind, and was competent to make a Will, and that the said Will was duly executed, as required by law, and that in said Will said testatrix named no person as Executor.

Wherefore, it is ordered, that said document, now in Court, and hereto attached, is hereby admitted to Probate as the last Will and Testament of said Hikaalani Noholoa.

DARK PAGE BLE

And it is further ordered, that Letters of Administration with the Will Annexed be issued to said Enoch Johnson; upon his filing approved bond in the sum of $1,000.00; that notice to creditors be published once a week for four successive weeks Evening Bulletin and an inventory filed within 30 days.

(35)

Dated December 12th, 1906.

(Sgd) A. N. KEPOIKAI,
Judge of the Circuit Court of the Second Circuit.

(Seal)

Attest:

(Sgd) EDMUND HART,
Clerk of the Circuit Court of the 2nd Circuit.

(36) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT, TERRITORY OF HAWAII.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Mrs. David Noholoa alias Hikaalani Noholoa, late of Kalaupapa, Molokai, deceased. } Before Judge Kepoikai. Proof of Will.

Proceedings Had December 12, A. D. 1906.

This matter came up for hearing this day, pursuant to continuances. Hearing was set for 10 o'clock, but upon special agreement of counsel, the hearing was commenced at 9:30 o'clock A. M. All parties interested were called.

W. L. Stanley, Esq., states that W. C. Achi, Esq., counsel for petitioner, had withdrawn, and that Messrs. Holmes and Stanley appeared for petitioner, and asks that they be so entered.

E. C. Peters, Esq., states that he represents Kaimiola Nakookoo Gray, a niece of deceased.

Mr. Stanley reads the petition, order of notice of hearing, motion for appointment of commissioner to take testimony of witnesses to execution of Will, order of appointment, and depositions of David Noholoa, Fannie H. Babcock and J. K. Waiamau; certificate of death of Hikaalani, and affidavit of publication of notice of hearing, and offers the Will in evidence, the same is then translated in part by the Court, as follows:

"I, the undesigned, a leper residing at Kalaupapa, Island of Molokai, Territory of Hawaii, do make this my Last Will for all property known belonging to me and appearing in
(37) my name situate at Kalaupapa aforesaid, with good will (or intention,) do hereby bequeath the same as hereinafter described: One gray horse, one bay mare; one black mare; one frame wooden house and other houses owned by me, as well as all other property owned by me, to my husband David Noholoa, residing at Kalaupapa aforesaid, to him and to his heirs, administrators and executors forever. Renouncing all claims that my relatives may set up in law to this."

Enoch Johnson, sworn, states:

Enoch Johnson is my name. I reside in Honolulu, Oahu. I am the person nominated in the petition for appointment as administrator. I am willing to accept the appointment, if appointed. The deceased owned at time of her death, real and personal property. The real property is situate in Honolulu, two pieces at Kalia, and one piece at Kamoiliili. The value of the pieces at Kalia, as shown by the tax books, is $3000, and that at Kamoiliili, $400. All of the real property is rented. That at Kalia ,as a whole, at $300. per annum, and that at Kamoiliili, at $40. per annum. The personal property is at Kalaupapa, and my only information as to that is from the Will. The heirs-at-law are David Noholoa, husband, and Kaimiola, a niece. Other heirs are barred out by the statute.

Mr. Stanley asks that the Will be admitted to Probate, and that Letters of Administration-with-the-Will-annexed of Hikaalani Noholoa, issue to Enoch Johnson, as prayed for.

The Court grants the prayer of the petition, and admits the Will to Probate, and directs Letters of Administration-with-the-Will-annexed to issue to Enoch Johnson, under a bond of $1000, to be approved by the Court, he to file inventory in 30 days, give the usual notices to creditors, and make final report in eight months.

EDMUND H. HART,
Clerk.

(38) IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, TERRITORY OF HAWAII.

AT CHAMBERS. IN PROBATE.

In the Matter of the Estate of Mrs. David Noholoa alias Hikaalani Noholoa (w) deceased. } Petition for Letters of Administration.

Clerk's Certificate.

I, the undersigned, Clerk of the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, hereby certify the following named papers and documents to be true and correct copies of the originals thereof on file in the matter of the estate of Hikaalani Noholoa (w), deceased, in the Circuit Court of the Second Judicial Circuit of the Territory of Hawaii, being Probate Division No. 1569:

Petition for Letters of Administration, Probate No. 1569;

Order of Notice of Hearing Petition for Administration, Probate No. 1569;

Affidavit of Publication, Probate No. 1569;

Petition for Probate of Will in the Matter of the Estate of Mrs. David Noholoa, alias Hikaalani Noholoa (w) late of Kalaupapa, Island of Molokai. Probate No. 1568;

Motion for a Commission to Take Testimony, Probate No. 1568;

Affidavit of Enoch Johnson, Probate No. 1568;

Order to take Deposition of David Noholoa, Fannie H. Babcock and J. K. Waiamau, Probate No. 1568;

Direct Interrogatories to Petitioner, David Noholoa, Probate No. 1568;

(39) Direct Interrogatories to J. K. Waiamau, Probate No. 1568;

Direct Interrogatories to Fannie H. Babcock, Probate No. 1568;

Commission to take testimony, Probate No. 1568;

Order for Notice of Hearing Petition for Probate of Will, Probate No. 1568;

Deposition of Fannie H. Babcock, Probate No. 1568;

Deposition of David Noholoa, Probate No. 1568;

Report of deaths, Probate No. 1568;

Deposition of J. K. Waiamau, Probate No. 1568;

Clerk's Minutes and Testimony on Petition for Appointment of Administrator, Probate No. 1569;

Clerk's Minutes and Testimony on Petition for Probate of Will, Probate No. 1568.

Dated Wailuku, Maui, Jan. 5, 1907.

EDMUND H. HART,
(Seal) Clerk Circuit Court Second Circuit.

Endorsed: Number 1569 Probate Division: No. 1568 Probate Division. Circuit Court Second Circuit, Territory of Hawaii: In the Matter of the Estate of Hikaalani Noholoa (w) deceased: Record: Received through the mail January 6, 1907, and filed January 7, 1907: J. A. Thompson, Clerk Supreme Court.

(40) IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, TERRITORY OF HAWAII.

AT CHAMBERS. IN EQUITY.

In the Matter of the Estate of Hikaalani Hobron Noholoa (w), deceased. } Petition for Letters of Administration.

Appeal and Notice of Appeal.

Now comes Kaimiola Nakookoo Gray, by whom a Petition for Letters of Administration was filed in the above entitled court and cause praying that Henry Smith or some other suitable person might be appointed administrator of the estate of Hikaalani Hobron Noholoa, deceased, concerning which decedent died intestate, by E. C. Peters, Esq., her attorney, and gives notice of appeal and does hereby appeal to the Supreme Court of the Territory of Hawaii from the order and judgment of the Honorable A. N. Kepoikai, Judge of the Circuit Court of the Second Judicial Circuit, made and entered in said cause on the 12th day of December A. D. 1906, denying the said Petition by this appellant for letters of administration in the above entitled cause.

Dated Honolulu, December 17th, A. D. 1906.

KAIMIOLA NAKOOKOO GRAY.
(Sg) By E. C. PETERS,
Her Attorney.

To David Noholoa and Enoch Johnson, and Messrs. Holmes & Stanley, their attorneys:

Of the foregoing appeal and notice of appeal please take notice and govern yourselves according.

(41) Dated Honolulu, December 17th, A. D. 1906.

KAIMIOLA NAKOOKOO GRAY,
(Sg) By E. C. PETERS,
Her Attorney.

Certificate.

I, the undersigned Clerk of the Circuit Court of the Second Judicial Circuit, hereby certify that the foregoing appeal and notice of appeal is a true and correct copy of the original on record in the above entitled court and cause.

EDMUND H. HART,

(Seal) Clerk Circuit Court of the Second Judicial Circuit.

Endorsed: Filed Jan. 10, 1907. J. A. Thompson, Clerk.

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(42) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

OCTOBER TERM, 1906.

IN THE MATTER OF THE ESTATE OF HIKAALANI HOBRON NOHOLA, DECEASED.

APPEAL FROM CIRCUIT JUDGE, SECOND CIRCUIT.

Submitted February 11, 1907. Decided February 12, 1907.

FREAR, C.J., HARTWELL AND WILDER, JJ.

Will—construction—nonapplication of ejusdem generis rule. A gift to husband of "all property known belonging to me and appearing in my name, situate at K., with intention to bequeath the same as hereinafter described: One bay mare, one black mare, one frame wooden house and other houses owned by me, as well as all other property owned by me," carries real estate in Honolulu, there being no reason for applying the ejusdem generis rule restricting the latter clause to property at K. in order to effectuate expressed intention.

(43) OPINION OF THE COURT BY HARTWELL, J.

The decedent died at the leper settlement leaving personal property there valued at $600 and land in Honolulu, assessed for taxes at $3400, leased at $240 a year with rental in the hands of J. A. Magoon said to amount to $500. Upon the petition of the husband and sole devisee the will was admitted to probate and letters of administration were granted to Enoch

Johnson, the judge denying the petition of the appellant, a niece and heir at law of the decedent, for administration on the estate in Honolulu which, as she claims, is not disposed of by the Will.

The Will, written in the Hawaiian language, is translated as follows:

"I, the undersigned, a Leper residing at Kalaupapa, Island of Molokai, Territory of Hawaii, do make this my last will for all property known belonging to me and appearing in my name, situate at Kalaupapa aforesaid, with good will (or intention) to hereby bequeath the same as hereinafter described: One gray horse, one bay mare, one black mare, one frame wooden house and other houses owned by me, as well as all other property owned by me, to my husband David Noholoa, residing at Kalaupapa aforesaid, to him and to his heirs, administrators and executors forever; renouncing all claims that my relatives may set up in law to this."

The appellant claims that only the Kalaupapa property is disposed of by the will, that the gift is restricted by the words "the same as hereinafter described" to the horses and houses mentioned and that the expression "as well as all other property owned by me" is merely a general phrase to include what may have been omitted in the specific description under the introductory words expressing an intention to dispose of the specified property only. She correctly says that the addition of the words "situate at Kalaupapa" after the words "as well as all other porperty owned by me" would "simplify an interpretation of the will." They would add materially and, we think,
(44) unwarrantably to its expressed intention for we see no ground for finding in it an intention to dispose of no property except that which is specifically named. The original of the will shows more clearly than does the evidently defective translation that the intention was to dispose of "also all the other property known to be mine." The decedent evidently knew well what her property at Kalaupapa was and there is no reason to suppose that she did not know of the property in Honolulu. To hold that because certain personal property is enumerated no other would pass under the expression "all other property" would be an application of the ejusdem generis rule, not to effectuate but to defeat the expressed intention. "Judges of the present day," it is said, prefer the rule "which gives to words of a comprehensive import their full extent of operation, unless some very distinct ground can be collected from the text for con-

sidering them as used in a special and restricted sense. 1 Jarman on Wills, 6 Ed., 735.

Decree appealed from affirmed.

E. C. Peters for appellant.

Holmes & Stanley and C. H. Olson for appellee.

W. F. FREAR,
ALFRED S. HARTWELL,
A. A. WILDER.

Endorsed: Supreme Court: Territory of Hawaii: In re Estate of Hikaalani H. Noholoa, deceased. Opinion. Filed February 12, 1907. J. A. Thompson, Clerk.

(45) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

OCTOBER TERM, 1906.

In the Matter of the Estate of Hikaalani Noholoa, deceased. } Application for Letters of Administration.

Substitution of Attorneys.

Now comes E. C. Peters, attorney for appellant in the above entitled cause, and asks permission of the Court to retire as attorney therein and that Messrs. Magoon & Lightfoot be substituted in his place as attorneys for appellant.

E. C. PETERS.

Dated Honolulu, March 4th, 1907.

Endorsed: Supreme Court, Territory of Hawaii: In the Matter of the Estate of Hikaalani Noholoa, deceased. Substitution of Attorneys. Filed March 4th, 1907, at 3:6 P. M. J. A. Thompson, Clerk. Magoon & Lightfoot, Magoon Building Honolulu Attorneys for appellant.

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(46) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

OCTOBER TERM, 1906.

In the Matter of the Estate of Hikaalani Noholoa, deceased. } Application for Letters of Administration.

Petition for Rehearing.

Now comes Kaimiola Nakookoo Gray, appellant, in the above entitled cause, by her attorneys Magoon & Lightfoot, and petitions this Honorable Court for a rehearing of said cause on the following grounds, to-wit:

First: The translation of the will of Mrs. David Noholoa as embodied in the decision of the court is incomplete and inaccurate and incorrectly conveys the meaning of the testatrix, a correct translation of said will being as follows:

"I, the undersigned, a leper residing at Kalaupapa, Island of Molokai, Territory of Hawaii, make this my last testament concerning all chattels known as mine and in my possession, being in Kalaupapa aforementioned; with sane mind I bequeath all those said goods of mine described as follows, to-wit.,

1 Creamed colored horse,

1 Bay mare,

1 Black mare,

1 Wooden house together with certain other houses, and all other chattels belonging to me, to my husband, David Noholoa, residing at said Kalaupapa and to his heirs and assigns forever. My heirs shall not have any right to claim these at law.

In witness whereof I hereto subscribe my name this 18th day of November, 1901.

her
MRS. DAVID NOHOLOA X
mark

In the presence of
Fannie H. Babcock
J. K. Waiamau,
Asst. Supt. Leper Settlement.

Second: The court in its decision has stated that the translation used was "evidently defective" and has not embodied in its decision a correct translation of the will and has
(47) not filed such a translation with the record in the case.

Third: The court has not given proper consideration to the following words and phrases in the will which, when properly considered, give an entirely different meaning from that arrived at by the court:

(a) The words "no na waiwai apau" in the 3rd line of the will should have been translated "concerning all the chattels or effects" instead of "all property" as appears in the decision.

(b) The words " a me na waiwai e ae apau" in the 10th and 11th lines should have been translated "and all other chattels or effects," followed by the words "situate at Kalaupapa" by implication, instead of "as well as all other property" as appears in the decision.

(c) The words "aole hoi he kuleana o ko'u mau ohana e koi mai ai i keia ma ke kauawai" (my heirs shall not have any

right to claim these at law) are significant words in the will explanatory of the intention of the testatrix to limit the property disposed of to her chattels at Kalaupapa. The words "ia mau pono" (all those said goods) in the 5th line showing that the words "na waiwai" were used in the sense of chattels are also omitted from the translation, and the bearing of these phrases upon the intention of the testatrix was not before the court for consideration.

Fourth: That the court in its decision has made no reference to Section 12 of the Rules and Regulations of the Board of Health relating to wills of personal property belonging to patients at the Leper Settlement, which rule should have been considered in arriving at the intention of the testatrix. Section 12 reads as follows:

(48) "Lepers may leave their personal property and effects at the Settlement by will, but only by a written will signed in the presence of not less than two witnesses, one of whom shall be the Superintendent of the Leper Settlement, or other officer authorized by the Superintendent."

Fifth: That the common law rule of presumption against intestacy does not apply to lepers on account of the peculiar status of lepers at Kalaupapa.

Sixth: That the presumption against intestacy as provided for in Section 2531 of the Revised Laws does not apply, for the reason that the will does not purport to dispose of all the real or personal estate of the testatrix.

Seventh: The court, by reason of the defective translation aforesaid, found that the rule "ejusdem generis" should not be applied in inquiring into the intention of the testatrix expressed by the words "na waiwai e ae apau" in the 10th and 11th lines of said translation, whereas from a correct translation of said words, it is imperative that said rule should be applied.

Eighth: That the court has not given sufficient consideration to the decision contained in appellant's brief, on the rule of "ejusdem generis" even with reference to the defective translation embodied in the decision of the Court.

This petition is based upon the record in the case, the affidavits of F. W. Beckley, C. L. Hopkins, Emma M. Nakuina, J. M. Poepoe, N. B. Emerson, M.D., J. S. Emerson, Henry Smith and J. Alfred Magoon hereto attached and made a part hereof, and to which reference is hereby made.

Dated Honolulu, March 2nd, 1907.

MAGOON & LIGHTFOOT,
Attorneys for appellant.

(49) City of Honolulu, County of Oahu, Territory of Hawaii. } ss.

Now comes J. Alfred Magoon, one of the attorneys for petitioner in the above entitled cause, and being first duly sworn on oath deposes and says that he has read the foregoing petition and believes that the allegations therein contained are true.

J. ALFRED MAGOON.

Subscribed and sworn to before me this 4th day of March, 1907.

F. W. WUNDENBERG,
(Seal) Notary Public Dist. of Honolulu.

(50) In the Supreme Court of the Territory of Hawaii.

January Term, 1907.

In the Matter of the Estate of Hiikalani Noholoa, deceased. } Application for Letters of Administration.

Affidavit of Frederick W. Beckley.

City of Honolulu, County of Oahu, Territory of Hawaii. } ss.

Now comes Frederick W. Beckley, residing in Honolulu, Island of Oahu, Territory of Hawaii, and being first duly sworn on oath, deposes and says:

That he is one of the official interpreters and translators from Hawaiian into English and English into Hawaiian of the Circuit Court of the First Circuit, Territory of Hawaii.

That he has translated into English the following document:

"Owau o ka mea nona ka inoa malalo iho, he ma'i Lepera e noho ana ma Kalaupapa, Mokupuni o Molokai, Teritori o Hawaii, ke hana nei au i keia o ka'u palapala kauoha hope loa keia no na waiwai apau i ike ia no'u a ma ko'u inoa e waiho ana ma Kalaupapa, i hoike ia maluna, me ka manao maikai, ke hooili nei au ia mau pono apau o'u i olelo ia e like me keia i hoakaka ia malalo penei:

1 Lio Puakea kane;
1 Lio Ulaula wahine;
1 Lio Eleele wahine;

1 Hale Laau me na hale e ae i ike ia no'u, a me na waiwai e ae apau i ike ia no'u, no kuu kane mare David Noholoa, e noho nei ma Kalaupapa, i oleloia maluna, a nona a me kona mau hoolilina, a Lunahooponopono Kauoha no ka wa pau ole. Aole hoi he kuleana o ko'u mau ohana e koi mai ai i keia ma ke kanawai.

No ka oiaio o keia ke kakau nei au i kou inoa i keia la 18 o November, A. D. 1901.

her
MRS. DAVID NOHOLOA X
mark

Ike maka
Fannie H. Babcock
J. K. Waiamau,
Asst. Supt. Leper Settlement.

That his translation thereof is as follows:

"I, the undersigned, a leper, residing at Kalaupapa,
(51) Island of Molokai, Territory of Hawaii, do make this my last will concerning all the chattels known to be mine and in my name situate at Kalaupapa aforesaid, with clear mind, I hereby bequeath all of said effects of mine as set forth below, to wit.,

1 Backskin horse;
1 Bay mare;
1 Black mare;

1 Wooden house and other houses known to be mine, and all other chattels known to be mine, for my husband David Noholoa, residing here at Kalaupapa aforesaid, to him and his heirs and executors forever. My heirs shall not have any right to claim these at law.

In testimony of this, I sign my name this 18th day of November, A. D. 1901.

her
MRS. DAVID NOHOLOA X
mark

In the presence of
Fannie H. Babcock
J. K. Waiamau,
Asst. Supt. Leper Settlement.

That it is plain from the Hawaiian version that Mrs. David Noholoa, a leper, disposes of all her personal property of what-

ever nature situate at Kalaupapa, Molokai, Territory of Hawaii, to her husband David Nohoiea, and bars all her heirs from making claim at law to said property. In line 3 of the original will referring to the property to be disposed of is the following clause "na waiwai apau i ike ia no'u a ma ko'u inoa e waiho ana ma Kalaupapa" (all properties known to be mine and in my name situate at Kalaupapa). In the translated copy affiant has used the terms "chattels" instead of the word "properties," because "na waiwai apau" (all the properties) is used in the plural sense, the word "na" giving the idea of plurality before "waiwai" (goods or property) shows that the meaning was limited to chattels or personal property and was not intended to mean lands or real estate. Though the word "waiwai" may be used to mean estate or property, real or personal, or both, it is thus evident that only personal property situate at Kalaupapa was to be disposed of. This is borne out by the words "ke hooili nei au ia mau *pono* apau o'u" in line 5 (I hereby bequeath all of said effects of mine). "Pono" in this sense qualifies the words "na waiwai" and limits them to
(52) personal effects or moveable goods. The word "waiwai" if intended to dispose of real property is very seldom, if ever, used without qualifying words such as "paa" (real) "apana aina" (parcel of land etc. In line 11 of the original, affiant has again used the words "chattels" for "na waiwai" for reasons already given. In line 14 in place of "ohana" (relatives), affiant has used the word "heirs," for the reason that although a person may be a relative and still not an heir, in this document the testatrix bars out all relatives from any claim to the property disposed of in the will. It is therefore evident that the word "ohana" in Hawaiian was intended to be limited to such relatives as would be her heirs at law. If any additional reason was required to show that the testatrix intended only to dispose of chattels at Kalaupapa and that the will did not refer to chattels in any other place nor to land, it is well known that the land at Kalaupapa belongs to the government and that the settlement at that place is a public institution. It is plain therefore, that the testatrix could not have intended to dispose of land at Kalaupapa and as she only had personal effects there which she could dispose of only to persons at the settlement, it is fair to presume that she had in mind those personal effects which she wished should go to her husband, assuming that all of her property outside of the settlement would go to her heirs at law.

F. W. BECKLEY.

Subscribed and sworn to before me this
1st day of March, 1907.

JOHN MARCALLINO,
Clerk 1st Circuit Court.

(53) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

JANUARY TERM, 1907.

In the Matter of the Estate of Hiikalani Noholoa, deceased. } Application for Letters of Administration.

Affidavit of C. L. Hopkins.

City of Honolulu, }
County of Oahu, } ss.
Territory of Hawaii. }

Now comes C. L. Hopkins residing in Honolulu, Island of Oahu, Territory of Hawaii, and being first duly sworn on oath, deposes and says:

That he is one of the official interpreters of Hawaiian into English and English into Hawaiian of the Circuit Court of the First Circuit, Territory of Hawaii.

That he has translated into English a paper purporting to be the will of Mrs. David Noholoa, a copy of which is as follows:

"Owau o ka mea nona ka inoa malalo iho, he ma'i Lepera e noho ana ma Kalaupapa, Mokupuni o Molokai, Teritori o Hawaii, ke hana nei au i keia o ka'u palapala kauoha hope loa keia no na waiwai apau i ike ia no'u a ma ko'u inoa e waiho ana ma Kalaupapa, i hoike ia maluna, me ka manao maikai, ke hooili nei au ia mau pono a pau o'u i olelo ia e like me keia i hoakaka ia malalo penei:

1 Lio Puakea kane;
1 Lio Ulaula wahine;
1 Lio Eleele wahine;

1 Hale Laau me na hale e ae i ike ia no'u, a me na waiwai e ae apau i ike ia no'u, no kuu kane mare David Noholoa, e noho nei ma Kalaupapa i oleloia maluna, a nona a me kona mau hooilina, a Lunahooponopono Kauoha no ka wa pau ole. Aole hoi he kuleana o ko'u mau ohana e koi mai i keia ma ke kanawai.

(54) No ka oiaio o keia ke kakau nei au i kou inoa i keia la 18 o November, A. D. 1901.

her
MRS. DAVID NOHOLOA X
mark

Ike maka
Fannie H. Babcock
J. K. Waiamau,
Asst. Supt. Leper Settlement.

That his translation thereof is as follows:

"I, whose name is subscribed below, a leper residing at Kalaupapa, Island of Molokai, Territory of Hawaii, do make this as my last will concerning all property known to be mine and in my name situate at Kalaupapa, mentioned above, with honest intention, do bequeath all those effects of mine aforesaid in accordance with this as described below to-wit:

1 Buckskin horse
1 Bay mare
1 Black mare
1 Wooden building and other houses known to be mine, and all other property known to be mine for my husband David Noholoa, residing at Kalaupapa mentioned above, for himself and his heirs and executors forever. That my family shall have no right to claim this at law.

In testimony of this I do subscribe my name this 18th day of November, A. D. 1901.

her
MRS. DAVID NOHOLOA X
mark

Witnesses
Fannie H. Babcock
J. K. Waiamau
Asst. Supt. Leper Settlement.

In the devising clause in this will the testatrix used the words "ke hooili nei au ia mau pono apau o'u i olelo ia" (I do bequeath all of those effects of mine aforesaid). This clause refers to the declaratory part of her will "no na waiwai apau i ike ia no'u a ma ko'u inoa" (all effects and property known to be mine and in my name) more particularly set out by her as to the nature thereof in the following words: "e like me keia i hoakaka ia malalo penei," (in accordance to those as described below). This clearly shows that the testatrix was disposing all personal property in the declaratory part of her will without any words of qualification as "lewa" (moveable) "paa" (immoveable);

all the nature of the property disposed of by her is made certain by the use of the words "mau pono apau" (all
(55) those effects) taken in conjunction with the schedule mentioned in the will. It is important to note that the testatrix makes use of the words "a me na waiwai e ae a pau i ike ia no'u" (all other goods (property) known to be mine). These words being used in conjunction with the schedule of personal property bequeathed could have no other significance than that there were other personal effects at Kalaupapa which the testatrix owned but had not enumerated in the will for she being possessor of houses would ordinarily have furniture, cooking utensils, etc., which should go with the houses as a matter of course for the benefit of her husband, her beneficiary, and in fulfilment of her declaration (manao maikai) just intention towards her husband. The testatrix makes her intention very clear as to the location of the property to be disposed of by the words "no na waiwai apau i ike ia no'u a ma ko'u inoa *e waiho ana ma Kalaupapa*" (concerning all property known to be mine and in my name *situate at Kalaupapa*) so that the words "a me na waiwai e ae apau i ike ia no'u" (and all other goods known to be mine) could only mean such as the testatrix possessed and owned in Kalaupapa and at no other place, and as to these things the testatrix admonishes her family or heirs that they shall have no rights or claim in them at law.

C. L. HOPKINS.

Subscribed and sworn to before me this
1st day of March, 1907.

JOHN MARCALLINO,
Clerk Circuit Court, First Circuit.

(56) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

JANUARY TERM, 1907.

In the Matter of the Estate of Hiikalani Noholoa, deceased. } Application for Letters of Administration.

Affidavit of Emma M. Nakuina.

City of Honolulu,
County of Oahu,
Territory of Hawaii. } ss.

Now comes Emma M. Nakuina, and being first duly sworn on oath deposes and says:

That she has resided in the Hawaiian Islands for more than 70 years last past.

That she is the Commissioner of Private Ways and Water Rights and in the execution of her duties as such Commissioner, has frequent ocassion to examine documents written in the Hawaiian language and that for many years affiant has made a study of the Hawaiian people, their language and manners and custom.

That affiant has carefully examined a document purporting to be the will of Mrs. David Noholoa, which is as follows:

"Owau o ka mea nona ka inoa malalo iho, he ma'i Lepera e noho ana ma Kalaupapa, Mokupuni o Molokai, Teritori o Hawaii, ke hana nei au i keia o ka'u palapala kauoha hope loa keia no na waiwai apau i ike ia no'u a ma ko'u inoa e waiho ana ma Kalaupapa, i hoike ia maluna, me ka manao maikai, ke hooili nei au ia mau pono a pau o'u i olelo ia e like me keia i hoakaka ia malalo penei:

1 Lio Puakea kane;

1 Lio Ulaula wahine;

1 Lio Eleele wahine;

1 Hale Laau me na hale e ae i ike ia no'u, a me na waiwai e ae apau i ike ia no'u, no kuu kane mare David Noholoa, e noho nei ma Kalaupapa i oleloia maluna, a nona a me kona mau hooilina, a Lunahooponopono Kauoha no ka wa pau
57) ole. Aole hoi he kuleana o ko'u mau ohana e koi mai ai i keia ma ke kanawai.

No ka oiaio o keia ke kakau nei au i kou inoa i keia la 18 o November, A. D. 1901.

her
MRS. DAVID NOHOLOA X
mark

Ike maka
Fannie H. Babcock
J. K. Waiamau
Asst. Supt. Leper Settlement.

That affiant has carefully translated said will into the English language, her translation being as follows:

"I, the undersigned, a leper living at Kalaupapa, Island of Molokai, Territory of Hawaii, I hereby make this my last will and testament concerning all properties (goods) known to be mine and in my name that are situated (laying) in Kalaupapa as shown above; with a good (clear) mind, I hereby bequeath all my above mentioned properties (goods) being those specified as follows (in the following schedule being understood) thus (in this way):

1 Puakea (buckskin) horse.
1 Red mare
1 Black mare

1 Wooden house with all other houses known to be mine and any other goods (chattels) known to be mine to my married husband David Noholoa now living at Kalaupapa, for him and his heirs and administrators forever. And my relatives will have no right by law to claim these (chattels being understood).

And in witness for the truth of this instrument, I hereby sign my name this 18th day of Nov. A. D. 1901.

her
MRS. DAVID NOHOLOA X
mark

Eye witnesses
Fannie H. Babcock
J. K. Waiamau
Asst. Supt. Leper Settlement.

That by no translation of this will conveying the meaning of the testatrix as expressed in Hawaiian, can real estate be included in the property disposed of, nor can any property be included outside of that situate or lying at Kalaupapa.

EMMA M. NAKUINA.

Subscribed and sworn to before me this
4th day of March, 1907.

F. W. WUNDENBERG,
(Seal) Notary Public Dist. of Honolulu.

(58) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

JANUARY TERM, 1907.

In the Matter of the Estate of } Application for Letters of
Hiikalani Noholoa, deceased. } Administration.

Affidavit of J. M. Poepoe.

City of Honolulu, }
County of Oahu, } ss.
Territory of Hawaii. }

Now comes J. M. Poepoe and being first duly sworn on oath,

deposes and says that he is a Hawaiian by birth, & has lived in the Hawaiian Islands for more than 54 years.

That he is an attorney-at-law by profession, licensed to practise law in all the courts of the Territory of Hawaii.

That affiant has carefully read and studied the following, purporting to be the will of Mrs. David Nohoiloa:

"Owau o ka mea nona ka inoa malalo iho, he ma'i Lepera e noho ana ma Kalaupapa, Mokupuni o Molokai, Territori o Hawaii, ke hana nei au i keia o ka'u palapala kauoha hope loa keia no na waiwai apau i ike ia no'u a ma ko'u inoa e waiho ana ma Kalaupapa, i hoike ia maluna, me ka manao maikai, ke hooili nei au ia mau pono a pau o'u i olelo ia e like me keia i hoakaka ia malalo penei:

1 Lio Puakea kane;

1 Lio Ulaula wahine;

1 Lio Eleele wahine;

1 Hale Laau me na hale e ae i ike ia no'u, a me na waiwai e ae apau i ike ia no'u, no kuu kane mare David Nohoiloa, e noho nei ma Kalaupapa i oleloia maluna, a nona a me kona mau hooilina, a Lunahooponopono kauoha no ka wa pau ole. Aole hoi he kuleana o ko'u mau ohana e koi mai ai i keia ma ke kanawai.

No ka oiaio o keia ke kakau nei au i kou inoa i keia la 18 o November, A. D. 1901.

her
MRS. DAVID NOHOLOA X
mark

Ike maka
Fannie H. Babcock
J. K. Waiamau
Asst. Supt. Leper Settlement.

That while the word "waiwai" may include both real and personal property, the Hawaiian expressions used in
(59) this will permit of only one interpretation, that is, that the property disposed of in the will is personal property situate at Kalaupapa and at no other place.

J. M. POEPOE.

Subscribed and sworn to before me this
4th day of March, A. D. 1907.

CHAS. A. MANU,
(Seal) Notary Public First Jud. Cir.

(60) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

JANUARY TERM, 1907.

In the matter of the Estate of) Application for Letters of
Hiikalani Noholoa, deceased.) Administration.

Affidavit of N. B. Emerson, M.D.

City of Honolulu,)
County of Oahu) ss.
Territory of Hawaii.)

Now comes N. B. Emerson and being first duly sworn on oath, deposes and says that he is a physician and surgeon residing and practising his profession in Honolulu, County of Oahu, Territory of Hawaii.

That affiant has resided in the Hawaiian Islands for more than 49 years and during said residence has made a study of the Hawaiian language and of the manners and customs of the Hawaiian people.

That affiant has carefully read a document purporting to be the will of Mrs. David Noholoa, which will is as follows:

"Owau o ka mea nona ka inoa malalo iho, he ma'i Lepera e noho ana ma Kalaupapa, Mokupuni o Molokai, Teritori o Hawaii, ke hana nei au i keia o ka'u palapala kauoha hope loa keia no na waiwai apau i ike ia no'u a ma ko'u inoa e waiho ana ma Kalaupapa, i hoike ia maluna, me ka manao maikai, ke hooili nei au ia mau pono a pau o'u i olelo ia e like me keia i hoakaka ia malalo penei:

1 Lio Puakea kane;

1 Lio Ulaula wahine;

1 Lio Eleele wahine;

1 Hale Laau me na hale e ae i ike ia no'u, a me na waiwai e ae apau i ike ia no'u, no kuu kane mare David Noholoa, e noho nei ma Kalaupapa i oleloia maluna, a nona a me kona mau hooilina, a Lunahooponopono Kauoha no ka wa pau ole. Aole hoi he kuleana o ko'u mau ohana e koi mai ai i keia ma ke kanawai.

No ka oiaio o keia ke kakau nei au i kou inoa i keia
(61) la 18 o November, A. D. 1901.

her
MRS. DAVID NOHOLOA X
mark

Ike maka
Fannie H. Babcock
J. K. Waiamau
Asst. Supt. Leper Settlement.

And affiant further says that the word "waiwai" is capable of bearing the meaning "real estate" but as used by the testatrix in the third and eleventh lines and under the limitations imposed upon it by her, this word means personal property. And under the like limitations it is limited to her personal property at Kalaupapa, Island of Molokai. If she had intended to have the instrument apply to property that she might have owned elsewhere, she would have named the place or would have used some phrase indicating a broader application of the will.

N. B. EMERSON.

Subscribed and sworn to before me this
2nd day of March, 1907.

CHAS. A. MANU,
(Seal) Notary Public 1st Jud. Cir.

(62) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

JANUARY TERM, 1907.

In the Matter of the Estate of Hiikalani Noholoa, deceased. } Application for Letters of Administration.

Affidavit of J. S. Emerson.

City of Honolulu,
County of Oahu,
Territory of Hawaii. } ss.

Now comes J. S. Emerson and having been first duly sworn on oath deposes and says: That he is now sixty-three years of age, was born and raised in the Hawaiian Islands and has resided here all of his life excepting during a few temporary absences, amounting in all to nearly ten years.

That affiant has made a study of the Hawaiian language and Hawaiian manners and customs.

That affiant has carefully read and translated from the Hawaiian into English, the document purporting to be the will of Mrs. David Noholoa, a copy of which will is as follows:

"Owau o ka mea nona ka inoa malalo iho, he ma'i Lepera e noho ana ma Kalaupapa, Mokupuni o Molokai, Teritori o Hawaii, ke hana nei au i keia o ka'u palapala kauoha hope loa keia no na waiwai apau i ike ia no'u a ma ko'u inoa e waiho ana ma Kalaupapa, i hoike ia maluna, me ka manao maikai, ke hooili nei au ia mau pono a pau o'u i olelo ia e like me keia i hoakaka ia malalo penei:

1 Lio Puakea kane;

1 Lio Ulaula wahine;

1 Lio Eleele wahine;

1 Hale Laau me na hale e ae i ike ia no'u, a me na waiwai e ae apau i ike ia no'u, no kuu kane mare David Noholoa, e noho nei ma Kalaupapa i olelo ia maluna, a nona a me kona mau hooilina, a Lunahooponopono Kauoha no ka wa pau ole. Aole hoi he kuleana o ko'u mau ohana e koi mai ai i keia ma ke kanawai.

No ka oiaio o keia ke kakau nei au i kou inoa i keia la 18 o November, A. D. 1901.

her

(63) MRS. DAVID NOHOLOA X

mark

Ike maka

Fannie H. Babcock,

J. K. Waiaman,

Asst. Supt. Leper Settlement.

That affiant's translation thereof is as follows:

"I, the undersigned, a leper, living at Kalaupapa, Island of Molokai, Territory of Hawaii, do make this my last will, with regard to all the goods or property known to be mine or held in my name situate at the above mentioned Kalaupapa, and being of sound mind, I do bequeath all the said effects belonging to me as set forth below: to-wit.,

1 Buckskin horse,

1 Bay mare,

1 Black mare,

1 Wooden house with the other houses known to be mine together with all the goods or property known to be mine, to my husband David Noholoa now living at the above mentioned Kalaupapa, to him and his heirs and administrators forever. Moreover my relatives have no right of property in these things by which they can claim them by law.

In testimony whereof I sign my name on this 18th day of November, 1901.

her
MRS. DAVID NOHOLOA X
mark

Witnesses,
Fannie H. Babcock
J. K. Waiamau
Asst. Supt. Leper Settlement.

That etimologically, grammatically and idiomatically the language used in this will describes property situate at Kalaupapa and that this property is personal property, as distinguished from lands for the reason that

(1) Though the word "waiwai" appearing in the third line of the will is a word which is capable of including all kinds of property, whether chattels or real estate, it is in this connection limited to the idea of chattels only because it is restricte by the phrase "e waiho ana ma Kalaupapa" and under this restriction it will be seen that only personal property is referred to.

(2) The ideas expressed by "na waiwai apau" in the 3rd line is later repeated in the 5th line in the expression "ia mau pono apau." This word *pono* cannot be used to include real estate. If therefore the testatrix limits her devise in the 5th line to pono, (goods, personal property), it is evident (64) that when describing her devise in the 3rd line she does not intend it to convey land.

(3) The words "na waiwai" are restricted by the phrase in the 6th line "e like me keia i hoakaka ia malalo penei" (according as set forth below, to-wit.), plainly indicating that all the property intended to be disposed of was situated at Kalaupapa.

(4) The property specifically described is personal property. There is nothing to show that the testatrix intended to include real property, or to suggest the possibility of including in the expression "a me na waiwai e ae apau i ike ia no'u" in the tenth and eleventh lines any property outside of her personal property at Kalaupapa.

(5) If the testatrix had intended to dispose of real property, she would in all probability have made use of some such expressions as "ko'u waiwaipaa" (my real estate), "ko'u aina" (my land), "ko'u kuleana" (my kuleana), "ko'u pa hale" (my house lot), "ko'u mau Loi" (my taro patches), as the Hawaiians are very particular and specific in such matters.

(6) There can be no doubt that the horses and one wooden house disposed of were at Kalaupapa. It was a wooden house

not a brick house attached to the soil. "Na hale e ae" (and other houses) in the tenth line were probably the out-houses, but whether out-houses or not, they were at Kalaupapa and at no other place.

(7) The words "na waiwai" in the tenth and eleventh lines constitute the same phrase as in the third line and were undoubtedly used to describe the same property and the words "situate at Kalaupapa" must follow by implication the phrase "a me na waiwai e ae apau i ike ia no'u" in the tenth and eleventh lines.

(8) At the end of the will is this significant sen-
(65) tence "aole hoi he kuleana o ko'u mau ohana e koi mai ai i keia ma ke kanawai" (moreover my relatives have no right of property in these things by which they can claim them at law,) that is, the things, the personal property situate at Kalaupapa which she gives to her husband and which her relatives are not to claim (as distinguished from real estate or any other form of property not at Kalaupapa) the implication being that such other property is to go to her heirs.

(9) The words "a me na waiwai e ae apau" in the tenth and eleventh lines constitute a phrase contained in the sentence describing the property situate at Kalaupapa. Had it been her intention to devise all her property a new sentence would have been required or else she should have employed some word or phrase to show that the phrase "situate at Kalaupapa" was not intended to limit the words "ame na waiwai e ae apau." No such words appear and it is plain that the phrase "all other property belonging to me" refers to all other personal property at Kalaupapa, and was intended to apply to only such personal effects as she ommitted from the schedule, such as furniture, bric a brac, etc., in her house, and which she had enjoyed together with her husband; these things she desired him to continue to enjoy after her death.

(10) Familiarity with Hawaiian method of expression and Hawaiian ideas would almost make it imperative to construe the words "na waiwai" as used in th ill to mean chattels. It is hardly possible that a Hawaiian w.....d intend to dispose by will of all real as well as personal property and enumerate certain chattels and not specifically refer to his lands, especially if the lands were of great value.

(11) To read a devise of real estate into this will makes it ambiguous, whereas if the will does not devise real
(66) estate it is plain. It would be foolish for the testatrix to specifically describe personal property situate at Ka-

laupapa and then dispose of all her property wherever situated. Had she intended to dispose of all property other than personal property at Kalaupapa, she would have left out all mention of the specific things and made use of some such expression as "ko'u waiwai apau loa ma na wahi apau e waiho ana" (all my property wherever situated) or "ko'u waiwai apau loa, ko'u waiwai lewa ame ko'u waiwai paa" (all my property both real and personal), leaving out all reference to the property which she owned located at Kalaupapa.

(12) The word "loa" is a very expressive word in Hawaiian and while the use of this word in addition to the word "apau" in line 11 would not make any difference in the grammatical construction, yet its omission is a slight indication that the testatrix did not have in mind that all of her property should be affected by the will.

J. S. EMERSON.

Subscribed and sworn to before me this
28th day of February, 1907.

J. LIGHTFOOT,

(Seal) Notary Public First Circuit Territory of Hawaii.

(67) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

JANUARY TERM, 1907.

In the Matter of the Estate of Hiikalani Noholoa, deceased. } Application for Letters of Administration.

Affidavit of Henry Smith.

City of Honolulu, }
County of Oahu, } ss.
Territory of Hawaii. }

Now comes Henry Smith, and being first duly sworn on oath, deposes and says:

That he is Hawaiian born and for about twenty-five years has been Clerk in the Judiciary Department of the Hawaiian Islands.

That affiant is the custodian of all wills probated in each and every Judicial Circuit of the Territory.

That during the time aforesaid, affiant has copied and read a great many wills written in the Hawaiian language, devising

and bequeathing lands and personal property, and is very familiar with Hawaiian expressions in wills disposing of real and personal property.

That during all the time aforesaid, affiant has not copied nor read any will devising realty or lands referring to them as "waiwai" but that in all wills copied or read by affiant, the word "waiwaipaa," "aina" or some word expressing *fixed* property has been used to devise real estate.

That affiant has read and studied the will of Mrs. David Noholoa filed in the above entitled cause and unhesitatingly states that it disposes of personal property only and all of such property is situate at Kalaupapa.

(68) HENRY SMITH.

Subscribed and sworn to before me this 2nd day of March, A. D. 1907.

CHAS. A. MANU,
(Seal) Notary Public 1st Jud. Cir.

(69) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

JANUARY TERM, 1907.

In the Matter of the Estate of Hiikalani Noholoa, deceased. } Application for Letters of Administration.

Affidavit of J. Alfred Magoon.

City of Honolulu, }
County of Oahu, } ss.
Territory of Hawaii. }

Now comes J. Alfred Magoon, residing at Honolulu, Island of Oahu, Territory of Hawaii, and being first duly sworn on oath, deposes and says:

That he is acquainted with Rev. H. H. Parker, a Minister of the Gospel, who has for many years last past been and is still the pastor of the Kawaiahao Church located in said Honolulu, preaching to an Hawaiian Congregation in the Hawaiian language.

That affiant submitted to said H. H. Parker, a copy of the will of Mrs. David Noholoa in words and figures as follows:

"Owau o ka mea nona ka inoa malalo iho, he ma'i Lepera e noho ana ma Kalaupapa, Mokupuni o Molokai, Teritori o Hawaii, ke hana nei au i keia e ka'u palapala kauoha hope loa keia no na waiwai apau i ike ia no'u a ma ko'u inoa e waiho ana ma Kalaupapa, i hoike ia maluna, me ka manao maikai, ke hooili nei au ia mau pono a pau ou i oleloia e like me keia i hoakaka ia malalo penei:

1 Lio Puakea kane;

1 Lio Ulaula wahine;

1 Lio Elele wahine;

1 Hale laau me na hale e ae i ike ia no'u, a me na waiwai e ae apau i ike ia no'u, no kuu kane mare David Noholoa, e noho nei ma Kalaupapa, i oleloia maluna, a nona a me kona mau hooilina, a Lunahooponopono Kauoha no ka wa pau ole. Aole loi he kuleana o ko'u mau ohana e koi ai i keia ma ke kanawai.

No ka oiaio o keia ke kakau nei au i kou inoa i keia la 18 o November, A. D. 1907.

her
MRS. DAVID NOHOLOA X
mark

Ike maka
Fannie H. Babcock
J. K. Waianuu,
Asst. Supt. Leper Settlement.

(70) And affiant requested said Parker to translate the same into English with which request he complied, and that a copy of his translation thereof is as follows:

"I, the undersigned, a leper residing at Kalaupapa, Island of Molokai, Territory of Hawaii, make this my last testament concerning all chattels known as mine and in my possession, being in Kalaupapa aforementioned; with sane mind I bequeath all those said goods of mine described as follows, to-wit.,

1 Creamed colored horse,

1 Bay mare,

1 Black mare,

1 Wooden house together with certain other houses, and all other chattels belonging to me, to my husband, David Noholoa, residing at said Kalaupapa, and to his heirs and assigns forever. And my family shall have no legal claim.

In witness whereof I hereto subscribe my name this 18th day of November, 1901.

J. ALFRED MAGOON.

Subscribed and sworn to before me this 4th day of March, A. D. 1907.

CHAS. A. MANU,

(Seal) Notary Public 1st Jud. Cir.

Endorsed: Supreme Court, Territory of Hawaii: In the Matter of the Estate of Hiikalani Noholoa, deceased: Petition for Rehearing and affidavits of F. W. Beckley, C. L. Hopkins, Emma M. Nakuina, J. M. Poepoe, N. B. Emerson, M.D., J. S. Emerson, Henry Smith and J. Alfred Magoon. Filed March 4, 1907, at 4:05 o'clock P. M. J. A. Thompson, Clerk. Magoon & Lightfoot, Magoon Building, Honolulu, Attorneys for ————————.

Service of copy of the within is hereby admitted this 4th day of March, 1907. Holmes & Stanley, attorneys for Appellee.

(71) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

OCTOBER TERM, 1906.

In the Matter of the Estate of Hikaalani Hobron Noholoa, deceased.	Petition for Letters of Administration. Appeal From Circuit Judge, Second Circuit.

Decree.

The appellant's appeal herein from the decree of the Honorable A. N. Kepoikai, Judge of the Circuit Court of the Second Circuit, Territory of Hawaii, having been heard and considered;

It is ordered and decreed that the said decree be, and the same is hereby, affirmed.

Dated, Honolulu, T. H., May 6, 1907.

By the Court,

(Seal) J. A. THOMPSON,
Clerk, Supreme Court.

Endorsed: Supreme Court of the Territory of Hawaii: October Term, 1906: In the Matter of the Estate of Hikaalani Hobron Noholoa, deceased. Decree. Filed May 6, 1907, at 10:20 o'clock A. M. J. A. Thompson, Clerk.

(72) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

OCTOBER TERM, 1906.

In the Matter of the Estate of Hikaalani Hobron Noholoa, Deceased. } Petition for Letters of Administration. Appeal From Circuit Judge, Second Circuit.

Notice of Decree Upon Appeal.

To the Honorable A. N. Kepoikai,
Judge of the Circuit Court of the Second Judicial Circuit, Territory of Hawaii.

You are hereby notified that in the above entitled cause the Supreme Court has made the following decree:

"DECREE.

"The appellant's appeal herein from the decree of the "Honorable A. N. Kepoikai, Judge of the Circuit Court of the "Second Circuit, Territory of Hawaii, having been heard and "considered;

"It is ordered and decreed that the said decree be, and the "same is hereby affirmed."

Dated, Honolulu, T. H., May 6, 1907.

By the Court:

(Seal) J. A. THOMPSON,
Clerk Supreme Court.

Endorsed: Supreme Court, Territory of Hawaii: October Term, 1906: In the Matter of the Estate of Hikaalani Hobron Noholoa, Deceased. Notice of Decree upon Appeal. Filed May 6, 1906, at 10:25 o'clock A. M. J. A. Thompson, Clerk.

(73) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

OCTOBER TERM, 1906.

CLERK'S MINUTES.

(p 172) Monday, February 11, 1907.
Court convened at 10 o'clock A. M.

Present on the Bench:

Hon. W. F. Frear, C.J., Hon. Alfred S. Hartwell and Hon. A. A. Wilder, J.J.

S. C. No. 190.

In the Matter of the Estate of Hikaalani Hobron Noholoa, Deceased. } Appeal From Circuit Judge, Second Circuit.

Appearances:

E. C. Peters for Appellant.

Holmes & Stanley and C. H. Olson for Appellee.

On call of the above entitled cause, E. C. Peters rose and addressing the Court stated that if it is agreeable to the Court he would, representing the appellant submit the above entitled cause on the brief.

C. H. Olson now with the firm of Holmes & Stanley representing the appellee herein also stated that it is agreeable to him to have the case submitted on the briefs.

The Court takes the case as submitted on the briefs.

(Sgd.) J. A. THOMPSON,
Clerk Supreme Court.

(74) Tuesday, February 12, 1907.

Court convened at 10 o'clock A. M.

(p 174) Present on the Bench:

Hon. W. F. Frear, C.J.

In the Matter of the Estate of Hikaalani Hobron Noholoa, Deceased. } Appeal From Circuit Judge, Second Circuit.

The Court this day hands down its opinion in the above entitled cause affirming the decree appealed from.

There being no business before the Court this day, at 10:5 A. M., it adjourns until 10 o'clock tomorrow morning, February 13.

(Sgd.) J. A. THOMPSON,
Clerk Supreme Court.

(p 198) Monday, April 1, 1907.

Court convened at Ten o'clock A. M.

Present on the Bench:

Hon. W. F. Frear, C.J., Hon. Alfred S. Hartwell and Hon. A. A. Wilder, J.J.

In the Matter of the Estate of Hikaalani Hobron Noholoa, Deceased. } Appeal From Circuit Judge, Second Circuit.

C. H. Olson, Esq., one of the counsel for appellee in the above entitled cause being present in Court rose and addressed the Court as follows: "If the Court please, in the matter of the Estate of Noholoa, we would respectfully ask that the matter go over until Thursday morning, Judge Stanley is
(75) engaged in the 'Lumber' matter in the United States District Court; this is a matter which involves the Hawaiian language, I myself should not care to argue the matter and I would rather that he (Stanley) argue, and Mr. Magoon is willing to have the matter go over until that time if it is agreeable to the Court."

After Mr. Olson's remarks, the Court suggested to have the matter set for Wednesday.

Mr. Olson replied to the Court's suggestion stating that it was too soon, whereupon the Court ordered the case set for Thursday morning, and in concluding, the Court stated that the matter should properly be on the list of motions, for rehearing.

(Sgd.) J. A. THOMPSON,
Clerk Supreme Court.

(p 203) Thursday, April 4, 1907.
Court convened at Ten o'clock A. M.

Present on the Bench:

Hon. W. F. Frear, C.J., Hon. Alfred S. Hartwell and Hon. A. A. Wilder, JJ.

In the Matter of the Estate of Hikaalani Hobron Noholoa, Deceased. } Appeal From Circuit Judge, Second Circuit.

Hearing on Appellant's Motion to be Granted a Rehearing.

Appearances:

Messrs. Magoon & Lightfoot for Appellant-Movant.

W. L. Stanley of the firm of Holmes & Stanley and C. H. Olson for Appellee.

On call of the above entitled cause, Mr. Magoon one of the attorneys for the movant rose and at 10:2 A. M. pro-
(76) ceeded with his argument in support of the motion for a rehearing.

During Mr. Magoon's argument, W. R. Castle, Esq., who had been invited by Mr. Justice Hartwell entered the Court-room and at the request of Mr. Justice Hartwell, said Mr. Castle rose before the Court to translate the Will under discussion herein, and after a preliminary questioning of Mr. Castle as to his knowledge of the Hawaiian language, he then proceeded to translate the Will herein as follows: "I whose name is written below a leper, a person sick with leprosy, living in Kalaupapa, Island of Molokai, Territory of Hawaii, I hereby make this is my last command or will, this is my last Will of all my property which is known to be mine and in my name at Kalaupapa aforesaid with good will or good intent, I hereby devise all of these goods, things aforesaid in accordance with the statement below, that is to say, one puakea horse, and then one red mare, one black mare, one wooden house together with other houses which are known to be mine and also all other property known to be mine for my husband David Noholoa living at Kalaupapa aforesaid for himself his heirs and executors forever. My family, my heirs shall not have any right to demand this under the law. In witness to the truth of this, I hereby make my name this 18th day of November, 1901. In the presence of Signed Mrs. David Noholoa by her mark."

Following Mr. Castle's translation above set forth, the Court again questioned him relative to the Will, and Mr. Castle replied that this is the first time that he had seen said Will and after remarks by the Court and counsel, Mr. Magoon resumed with his argument concluding at 10:58 A. M. and was followed by Mr. Lightfoot also for the movant who concluded his argument at 11 A. M.

(77) At 11:2 A. M. Mr. Stanley one of the attorneys for the appellees commenced with his argument concluding at 11:9 A. M. followed by Mr. Olson also for the appellees who concluded at 11:19 A. M.

Motion submitted.

At 11:20 A. M. the Court takes a recess until 2 o'clock P. M. today.

(p 204) Afternoon Session.

Court reconvened at 2 o'clock P. M.

Present on the Bench:

Hon. W. F. Frear, C.J., Hon. Alfred S. Hartwell and Hon. A. A. Wilder, JJ.

In the Matter of the Estate of Hikaalani H. Noholoa, Deceased. } Appeal From Circuit Judge, Second Circuit.

Immediately after the Court reconvened this afternoon and after the Justices had taken their seats, the Court per Frear, C.J., rendered its oral decision on the motion for a rehearing in the above entitled cause, which motion was argued and submitted this morning, in words as follows:

Frear, C.J.: "In the Matter of the Estate of Hikaalani Noholoa, the motion for a rehearing is denied, I dissenting."

(Sgd.) J. A. THOMPSON,
Clerk Supreme Court.

(78) In the Supreme Court of the Territory of Hawaii.

October Term, 1906.

May Session, 1907.

In the Matter of the Estate of Hiikaalani Hobron Noholoa, deceased. }

Petition For Appeal to the Supreme Court of the United States.

Kaimiola Nakookoo Gray, petitioner in the above entitled cause and appellant herein respectfully shows:

That the above entitled cause is now pending in the Supreme Court of the Territory of Hawaii and that a decree has therein been rendered on the 6th day of May, A. D. 1907, affirming the decree of the Honorable A. N. Kepoikai, Judge of the Circuit Court of the Second Circuit, Territory of Hawaii, denying the petition of the appellant for administration on the estate of the above named decedent, situate in Honolulu, County of Oahu, Territory of Hawaii.

That the value of the matter in controversy in said suit exceeds $5000, besides cost; that this cause is one in which the Supreme Court of the Territory of Hawaii had final jurisdiction, and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore the said appellant prays that an appeal be allowed her in the above entitled cause directing the Clerk of the

Supreme Court of the Territory of Hawaii to send the record and proceedings in said cause with all things concerning the same to the Supreme Court of the United States, in
(79) order that the errors complained of in the assignment of errors herewith filed by the said appellant may be reviewed, and, if error be found, corrected according to the laws and customs of the United States.

And the appellant further prays that an order be made fixing the amount of security which your petitioner shall give and furnish upon said appeal and that upon the giving of such security all further proceedings in the above cause be suspended and stayed until the determination of the appeal by the Supreme Court of the United States.

Dated, Honolulu, June 6th, 1907.

MAGOON & LIGHTFOOT,
Attorneys for appellant.

Endorsed: Supreme Court, Territory of Hawaii: In the Matter of the Estate of Hiikalani Hobron Noholoa, deceased: Petition for appeal to the Supreme Court of the United States, and Order allowing appeal: Filed June 6, 1907: At 3:25 P. M. J. A. Thompson, Clerk Supreme Court of the Territory of Hawaii. Magoon & Lightfoot, Magoon Building, Honolulu, Attorneys for appellant.

(80) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

OCTOBER TERM, 1906.

JANUARY SESSION, 1907.

In the Matter of the Estate of Hiikalani Hobron Noholoa, deceased. } Petition For Letters of Administration.

Assignment of Errors.

The appellant in the above entitled cause in connection with her petition for appeal presents and files herewith her assignment of errors, as to which matters and things she says that

the decree entered herein on the 6th day of May, 1907, is erroneous, to wit:

First: The Supreme Court of the Territory of Hawaii erred in deciding said case upon a translation of the will in question which was "evidently defective."

Second: The Supreme Court of the Territory of Hawaii erred in holding and deciding that the words translated "also all the other property known to be mine" were not modified by the words translated "situate at Kalaupapa aforesaid."

Third: The Supreme Court of the Territory of Hawaii erred in adopting the word "property" as a translation of the words "na waiwai" instead of adopting the words "chattels" or "effects" as the English equivalent of the said words.

Fourth: The Supreme Court of the Territory of Hawaii erred in holding and deciding that the words of the will translated "also all the other property known to be mine," showed the intention of the testatrix to dispose of her Honolulu property.

Fifth: The Supreme Court of the Territory of Hawaii erred in holding that the will in question passed property situate elsewhere than at Kalaupapa and failed to consider
(81) the situation of the testatrix at the time of making the will, and especially failed to consider that she was living at the Leper Settlement at Kalaupapa, a government institution.

Sixth: The Supreme Court of the Territory of Hawaii erred in holding and deciding that the rule ejusdem generis does not apply in the construction of the said will.

Seventh: The Supreme Court of the Territory of Hawaii erred in denying the motion for rehearing in said cause.

Wherefore the appellant prays that said decree may be reversed and that appellant may have an adjudication and decree in her favor as herein specified.

MAGOON & LIGHTFOOT,

Attorneys for Appellant.

Dated, Honolulu, June 6th, 1907.

Endorsed: Supreme Court, Territory of Hawaii: In the Matter of the Estate of Hiikalani Hobron Noholoa, deceased: Assignment of Errors: Filed June 6, 1907, at 3:25 o'clock P. M. J. A. Thompson, Clerk Supreme Court of the Territory of Hawaii. Magoon & Lightfoot, Magoon Building, Honolulu. Attorneys for appellant.

(82) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

OCTOBER TERM, 1906.

JANUARY SESSION, 1907.

In the Matter of the Estate of Hiikalani Hobron Noholoa, deceased. } Petition For Letters of Administration.

Affidavit of J. Alfred Magoon.

City of Honolulu, }
County of Oahu, } ss.
Territory of Hawaii. }

Now comes J. Alfred Magoon and being first duly sworn on oath, deposes and says:

That for more than 20 years last past, he has resided in Honolulu, Island of Oahu, Territory of Hawaii, has during that time continuously dealt in real estate in the City of Honolulu and elsewhere in the Hawaiian Islands and is familiar with the prices of real estate in the City of Honolulu.

That he was the agent of Hiikalani Noholoa for 8 years prior to her death, and as such agent had charge of all her property in the Island of Oahu at the time of her death.

That said Hiikalani owned at the time of her death and left as belonging to her estate inter alia, the following described land situate in Honolulu, Island of Oahu:

Beginning at the west corner of this land at the sea adjoining the government land and running,

N. 48° E. 8.59 chains along government land to a ditch, thence
S. 17° E. 4.07 chains
S. 24° E. 3.34 chains along the ditch of Kaihikapu of the government, thence
S. 52° 30′ W. 1.65 chains along the government to Umi's land, thence
N. 22° W. 3½ chains
S. 54° W. 56 links
(83) S. 13° E. 1.26 chains
S. 43° W. 1.42 chains
S. 43° E. 2 chains along the land of Umi to the land of Kawao, thence

S. 52° 30′ W. 3.89 chains along Nakookoo to Kahaone, thence along Kahaone to the point of beginning, containing an area of 4 6-10 acres and being the same premises described in Royal Patent 3441 L. C. A. 2511.

That said land at the time of the death of said Hiikalani was and is now of greater value than $5000; to wit, of the value of between $10,000. and $30,000.

J. ALFRED MAGOON.

Subscribed and sworn to before me this 6th day of June, 1907.

(Sgd.) F. W. WUNDENBERG,
Notary Public, District of Honolulu.

Subscribed and sworn to before me as amended this 6th day of June, 1907.

(Seal) J. A. THOMPSON,
Clerk Supreme Court,
Territory of Hawaii.

Endorsed: Supreme Court, Territory of Hawaii: In the Matter of the Estate of Hiikalani Hobron Noholoa, deceased: Affidavit of J. Alfred Magoon: Filed June 6, 1907, at 3:25 o'clock P. M. J. A. Thompson, Clerk Supreme Court of the Territory of Hawaii: Magoon & Lightfoot, Magoon Building, Honolulu, Attorneys for appellant.

(84) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

OCTOBER TERM, 1906.

MAY SESSION, 1907.

In the Matter of the Estate of Hiikalani Hobron Noholoa, deceased.

Order Allowing Appeal.

It is hereby ordered that the appeal in the above entitled matter to the Supreme Court of the United States be and is hereby allowed as prayed, and

It is hereby further ordered that the amount of the supersedeas bond be and is hereby fixed at $1000.00.

(Sgd) W. F. FREAR,
(Seal) Chief Justice of the Supreme Court of the Territory of Hawaii.

Endorsed: Supreme Court, Territory of Hawaii: In the Matter of the Estate of Hiikalani Hobron Noholoa, deceased: Petition for appeal to the Supreme Court of the United States, and Order allowing appeal: Filed June 6, 1907: At 3:25 o'clock P. M. J. A. Thompson, Clerk Supreme Court of the Territory of Hawaii. Magoon & Lightfoot, Magoon Building, Honolulu, Attorneys for appellant.

(85) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

OCTOBER TERM, 1906.

MAY SESSION, 1907.

In the Matter of the Estate of Hiikalani Hobron Noholoa, deceased.

Bond.

KNOW ALL MEN BY THESE PRESENTS that we Kaimiola Nakookoo Gray of Kalaupapa, Island of Molokai, County of Kalawao, Territory of Hawaii, principal, and Henry Smith, of Honolulu, County of Oahu, Territory of Hawaii, surety, are held and firmly bound unto David Noholoa of Kalaupapa, aforesaid, in the sum of $1000.00 to be paid to the said David Noholoa, his executors, administrators or assigns; to which payment well and truly to be made we bind ourselves and our respective heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated this 6th day of June, 1907.

Whereas the appellant in the above entitled matter has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entitled in said cause in the Supreme Court of the Territory of Hawaii, on the 6th day of May, 1907.

Now therefore the condition of this obligation is such that if the said appellant shall prosecute said appeal to effect and an-

swer all damages if she shall fail to make said plea good, then this obligation shall be void otherwise to remain in full force and virtue.

KAIMIOLA NAKOOKOO GRAY
By her Attorney in Fact Henry Smith.
HENRY SMITH.

(86) City of Honolulu, County of Oahu, Territory of Hawaii. } ss.

Henry Smith, the surety named in the foregoing bond, being first duly sworn says:

That he is a resident and freeholder of the County of Oahu, Territory of Hawaii, and is worth the sum of $2,000.00 over and above all his just debts and liabilities exclusive of property exempt from execution.

HENRY SMITH.

Subscribed and sworn to before me this
6th day of June, 1907.

L. P. SCOTT.

The foregoing bond is approved this 6th day of June, 1907.

W. F. FREAR.
Chief Justice of the Supreme Court of the
Territory of Hawaii.

Endorsed: Supreme Court, Territory of Hawaii: In the Matter of the Estate of Hiikalani Hobron Noholoa, deceased: Bond: Filed June 6, 1907, at 3:25 o'clock P. M.: J. A. Thompson, Clerk Supreme Court of the Territory of Hawaii: Magoon & Lightfoot, Magoon Building, Honolulu, Attorneys for Appellant.

(87) IN THE SUPREME COURT OF THE UNITED STATES.

In the Matter of the Estate of Hiikalani Hobron Noholoa, deceased. }

Citation to Appellee.

The United States of America
To David Noholoa,

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington,

in the District of Columbia, sixty days after the date of this citation pursuant to an appeal allowed and filed in the Clerk's office of the Supreme Court of the Territory of Hawaii, wherein Kaimiola Nakookoo Gray is appellant and you are appellee, to show cause if any there be why the decree rendered against the said appellant, as in said appeal named, shall not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable W. F. Frear, Chief Justice of the Supreme Court of the Territory of Hawaii, this 6th day of June, 1907.

W. F. FREAR,
(Seal) Chief Justice of the Supreme Court of the Territory of Hawaii.

Service of the within and foregoing citation, and receipt of a copy thereof admitted this 7th day of June, 1907.

HOLMES & STANLEY,
Attorneys for Appellee.

Endorsed: In the Supreme Court of the United States: In the Matter of the Estate of Hikaalani Hobron Noholoa, deceased: Citation to Appellee: Filed June 7, 1907, at 11 o'clock A. M. J. A. Thompson, Clerk Supreme Court Territory of Hawaii.

(88) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

In the Matter of the Estate of Hikaalani Hobron Noholoa, deceased.

Praecipe Designating Parts of Record to be Included in Transcript.

To J. A. Thompson, Esq., Clerk of the Supreme Court of the Territory of Hawaii:

You are hereby requested to make a transcript of the record in the Supreme Court of the Territory of Hawaii in the cause entitled in said Court "In the Matter of the Estate of Hikaalani Hobron Noholoa, Deceased," and to include in such transcript of record the following and no other papers and exhibits, to-wit:—

1. Petition for Letters of Administration,
2. Order of Notice of Hearing Petition for Administration,
3. Affidavit of Publication of Notice of Hearing of Petition for Administration annexed thereto is copy of the notice,
4. Circuit Court Clerk's Minutes of proceedings had December 12, 1906, re hearing upon Petition for Administration,
5. Petition for Probate of Will,
6. Order of Notice of Hearing Petition for Probate of Will,
7. Motion for Commission to take Deposition,
8. Affidavit of Enoch Johnson,
9. Order for issuance of Commission to J. D. McVeigh to take deposition,
10. Commission issued to J. D. McVeigh, Esq., to take deposition,
11. Interrogatories to David Nohoboa,
12. " " Fannie H. Babcock,
13. " " J. K. Waiamau,
14. Deposition of David Nohoboa,
15. " " Fannie H. Babcock,
16. " " J. K. Waiamau,
17. Report of Death of Hikaalani Hobron,
18. Certificate of J. D. McVeigh, Commissioner to take Deposition,

(89)

19. Order of Probate,
20. Circuit Court Clerk's Minutes of proceedings had December 12, 1906, re Hearing upon Petition for Probate of Will,
21. Clerk's Certificate to Transcript of Record from the Circuit Court,
22. Appeal and Notice of Appeal and certificate,
23. Opinion of the Supreme Court rendered February 12, 1907,
24. Substitution of Attorneys,
25. Petition for Rehearing, accompanying said Petition are
26. Affidavit of Frederick W. Beckley,
27. " " C. L. Hopkins,
28. " " Emma M. Nakuina,
29. " " J. M. Poepoe,
30. " " N. B. Emerson, M. D.,
31. " " J. S. Emerson,
32. " " Henry Smith And
33. " " J. Alfred Magoon,

34. Decree Supreme Court,
35. Notice of Decree upon Appeal,
36. Minutes of Clerk of Supreme Court,
37. Petition for Appeal to the Supreme Court of the United States,
38. Assignment of Errors,
39. Affidavit of J. Alfred Magoon,
40. Order allowing Appeal,
41. Bond, And
42. Citation to Appellee and Acknowledgment of service thereof.

Respectfully,

MAGOON & LIGHTFOOT,

Attorneys for Kaimiola Nakookoo Gray—Appellant.

Dated Honolulu, T. H., July 18, 1907.

Endorsed: Supreme Court Territory of Hawaii. In the Matter of the Estate of Hikaalani Hobron Noholoa, Deceased. Praecipe designating parts of Record to be included in Transcript. Filed July 20, 1907, at 11 o'clock A. M. J. A. Thompson, Clerk Supreme Court Territory of Hawaii.

(90) IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

OCTOBER TERM, 1906.

JANUARY SESSION, 1907.

In the Matter of the Estate of Hiikalani Hobron Noholoa, deceased.) Petition For Letters of Administration.

Assignment of Errors.

The appellant in the above entitled cause in connection with her petition for appeal presents and files herewith her assignment of errors, as to which matters and things she says that the decree entered herein on the 6th day of May, 1907, is erroneous, to wit:

First: The Supreme Court of the Territory of Hawaii erred in deciding said case upon a translation of the will in question which was "evidently defective."

Second: The Supreme Court of the Territory of Hawaii erred in holding and deciding that the words translated "also all the other property known to be mine" were not modified by the words translated "situate at Kalaupapa aforesaid."

Third: The Supreme Court of the Territory of Hawaii erred in adopting the word "property" as a translation of the words "na waiwai" instead of adopting the words "chattels" or "effects" as the English equivalent of the said words.

Fourth: The Supreme Court of the Territory of Hawaii erred in holding and deciding that the words of the will translated "also all the other property known to be mine," showed the intention of the testatrix to dispose of her Honolulu property.

Fifth: The Supreme Court of the Territory of Hawaii erred in holding that the will in question passed property situate elsewhere than at Kaiaupapa and failed to consider
(91) the situation of the testatrix at the time of making the will, and especially failed to consider that she was living at the Leper Settlement at Kalaupapa, a government institution.

Sixth: The Supreme Court of the Territory of Hawaii erred in holding and deciding that the rule ejusdem generis does not apply in the construction of the said will.

Seventh: The Supreme Court of the Territory of Hawaii erred in denying the motion for rehearing in said cause.

Wherefore the appellant prays that said decree may be reversed and that appellant may have an adjudication and decree in her favor as herein specified.

MAGOON & LIGHTFOOT,

Attorneys for Appellant.

Dated, Honolulu, June 6th, 1907.

(92) Endorsed: Supreme Court, Territory of Hawaii: In the Matter of the Estate of Hiikalani Hobron Noholoa, deceased: Assignment of Errors: Filed June 6, 1907, at 3:25 o'clock P. M. J. A. Thompson, Clerk Supreme Court of the Territory of Hawaii. Magoon & Lightfoot, Magoon Building, Honolulu, Attorneys for appellant.

(93) IN THE SUPREME COURT OF THE UNITED STATES.

In the Matter of the Estate of Hiikalani Hobron Noholoa, deceased.

Citation to Appellee.

The United States of America
To David Noholoa,

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, in the District of Columbia, sixty days after the date of this citation pursuant to an appeal allowed and filed in the Clerk's office of the Supreme Court of the Territory of Hawaii, wherein Kaimiola Nakookoo Gray is appellant and you are appellee, to show cause if any there be why the decree rendered against the said appellant, as in said appeal named, shall not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable W. F. Frear, Chief Justice of the Supreme Court of the Territory of Hawaii, this 6th day of June, 1907.

W. F. FREAR.

(Seal) Chief Justice of the Supreme Court of the Territory of Hawaii.

Service of the within and foregoing citation, and receipt of a copy thereof admitted this 7th day of June, 1907.

HOLMES & STANLEY,
Attorneys for Appellee.

(94) Endorsed: In the Supreme Court of the United States: In the Matter of the Estate of Hikaalani Hobron Noholoa: Citation to Appellee: Filed June 7, 1907, at 11 o'clock A. M. J. A. Thompson, Clerk Supreme Court Territory of Hawaii.

No. [redacted]

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

In the Matter of the Estate

—OF—

HIKAALANI HOBRON NOHOLOA, Deceased.

ON APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF HAWAII.

BRIEF FOR APPELLANT.

HONOLULU:
HAWAIIAN GAZETTE CO., LTD.
1906

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

IN THE MATTER OF THE ESTATE OF HIKAALANI HOBRON NOHOLOA, DECEASED.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

Hikaalani Hobron Noholoa, a leper, residing at Kalaupapa, Island of Molokai, Territory of Hawaii, died on or about the 29th day of June, A. D. 1906, leaving certain personal property at the leper settlement, that is, at Kalaupapa, (this being a name under which the leper settlement is very often spoken of,) and certain real and personal property on the Island of Oahu.

Her heirs-at-law are her husband, David Noholoa, and a niece, Kaimiola Nakookoo Gray, the appellant, both of whom are lepers, residing on the Island of Molokai. Upon the decease of Mrs. Noholoa, there was offered by one Enoch Johnson to the judge of the circuit court of the second circuit, a will written in the Hawaiian language purporting to be the last will and testament of the deceased, and a petition was regularly made that letters testamentary issue to him. At the same time, the niece, appellant herein, applied for letters of administration upon the property of the deceased subject to administra-

tion, situate on the Island of Oahu, upon the ground that the same was not subject to the will and that, as to such property, the deceased died intestate. The petitions were heard on the same day in the circuit court of the second circuit; the proceedings in the matter of the will being made a part of the proceedings in the petition for letters of administration. The will was admitted to probate and Enoch Johnson appointed administrator-with-the-will-annexed under a bond of one thousand dollars.

The petition for letters of administration was denied. An appeal was taken to the Supreme Court of the Territory of Hawaii by Kaimiola Nakookoo Gray, and in that court the decision of the circuit judge, denying the petition, was affirmed. A petition for re-hearing was duly filed; and the petition denied, the Chief Justice dissenting. Thereupon, this appeal was taken and perfected.

At the hearing in the circuit court on the petition for probate of the will, a translation thereof was made in part by the Honorable A. N. Kepoikai, judge of the second circuit court, which translation is as follows:

"I, the undersigned, a leper residing at Kalaupapa, Island of Molokai, Territory of Hawaii, do make this my last will for all property known belonging to me and appearing in my name situate at Kalaupapa aforesaid, with good will (or intention,) do hereby bequeath the same as hereinafter described: One gray horse, one bay mare; one black mare; one frame wooden house and other houses owned by me, as well as all other property owned by me, to my husband David Noholoa, residing at Kalaupapa aforesaid, to him and to his heirs, administrators and executors forever. Renouncing all claims that my relatives may set up in law to this." (24).

It was this translation that was used on appeal to the

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Supreme Court of the territory and which that court declared to be "evidently defective."

The vital question involved in this case is the intention of the testatrix in making said will. It is contended by the appellant that the will disposed of only such personal property belonging to the testatrix as she had at the leper settlement at the time of her death; and, on the other hand, it was contended by Mr. Enoch Johnson that by the words "as well as all other property owned by me" the testatrix meant to devise and bequeath her real and personal property situate on the Island of Oahu; the personal property being of about the value of five hundred dollars, and the real estate being valued at from ten thousand to thirty thousand dollars. (58).

SPECIFICATION OF ERRORS.

The appellant relies upon all the specifications of errors set forth in the assignment of errors filed herein, to wit:

First: The Supreme Court of the Territory of Hawaii erred in deciding said case upon a translation of the will in question which was "evidently defective."

Second: The Supreme Court of the Territory of Hawaii erred in holding and deciding that the words translated "also all the other property known to be mine" were not modified by the words translated "situate at Kalaupapa aforesaid."

Third: The Supreme Court of the Territory of Hawaii erred in adopting the word "property" as a translation of the words "na waiwai" instead of adopting the words "chattels" or "effects" as the English equivalent of the said words.

Fourth: The Supreme Court of the Territory of Hawaii erred in holding and deciding that the words of the will translated "also all the other property known to be mine," showed the intention of the testatrix to dispose of her Honolulu property.

FIFTH: The Supreme Court of the Territory of Hawaii erred in holding that the will in question passed property situate elsewhere than at Kalaupapa and failed to consider the situation of the testatrix at the time of making the will, and especially failed to consider that she was living at the leper settlement at Kalaupapa, a government institution.

SIXTH: The Supreme Court of the Territory of Hawaii erred in holding and deciding that the rule ejusdem generis does not apply in the construction of the said will.

SEVENTH: The Supreme Court of the Territory of Hawaii erred in denying the motion for rehearing in said cause. (63 & 64).

BRIEF OF ARGUMENT.

FIRST: *The Supreme Court of the Territory of Hawaii erred in deciding said case upon a translation of the will in question, which was "evidently defective."* (28).

As pointed out above, the will was written in the Hawaiian language. It was drawn by a layman, J. K. Waiamau, (20), assi-tant superintendent of the leper settlement. It was signed Mrs. David Noholoa, her mark, and witnessed by Fannie H. Babcock and by said J. K. Waiamau.

The Justices of the Territorial Supreme Court, when this matter was decided, were more or less familiar with the Hawaiian language, and had sufficient knowledge thereof to see that the translation in question was defective; and it is contended that the Territorial Supreme Court erred in deciding property rights of great value upon an "evidently defective" translation of the will. Had a correct translation been made, it would have clearly appeared that the will in question bequeathed only the personal property at Kalaupapa, and did not refer to property on the Island of Oahu.

SECOND: *The Supreme Court of the Territory of Hawaii erred in holding and deciding that the words translated "also all the other property known to be mine," were not modified by the words translated "situate at Kalaupapa aforesaid."* (28).

It is elementary that in a question concerning the construction of wills, the intention of the testator is the guiding consideration and that this intention will always prevail unless it is against some positive rule of law.

RULES OF CONSTRUCTION GENERALLY.

"The first and great rule in the exposition of wills, to which all other rules must bend, is that the intention of the testator expressed in his will shall prevail, provided it be consistent with the rules of law."

Smith v. Bell, 6 Pet. 68.
Lambert v. Paine, 3 Cranch 97.

"The intent of the testator is the cardinal rule in the construction of wills; and if that intent can be clearly perceived, and is not contrary to some positive rule of law, it must prevail, although in giving effect to it some words should be rejected, or so restrained in their application as to change the literal meaning of the particular sentence."

Finlay v. King, 3 Pet. 346.

"The construction of a will is governed by the intention of the testator, when not inconsistent with the rules of law."

Colton v. Colton, 127 U. S. 300.

"A court is authorized to put itself in the position occupied by a testator, in order, in view of the circumstances then existing, to discover from that standpoint what the testator intended by his will."

Lee v. Simpson, 134 U. S. 572.

"There is no principle of law more generally admitted than that the intention of the testator should be carried out if the same can be gathered from the contents of the instrument."

Harrison v. Judd, 3 Haw. 421.

"The intention of the testator as indicated in the will must prevail, unless it is in violation of some rule of law. A will is therefore to be construed so that all its parts, when considered in relation to each other, shall form a consistent whole."

Zupplein v. Austin, 6 Haw. 8, 1867.

"The intention of the testator should govern in the construction of wills."

Thurston v. Allen, 8 Haw. 392.

Whatever may be the defects in the translation of the will adopted by the Supreme Court of the Territory, even that translation shows that the will *refers* to property at Kalaupapa, for the defective translation reads as follows:

"I, the undersigned, a leper residing at Kalaupapa, Island of Molokai, Territory of Hawaii, do make this my last will for all property known belonging to me and appearing in my name situate at Kalaupapa aforesaid, * * *." (28).

After the Supreme Court of the Territory had decided this case on a defective translation of the will, Messrs. Magoon and Lightfoot were retained to petition the Supreme Court for a rehearing in part upon the ground that the translation adopted by the Supreme Court was defective and those attorneys procured affidavits of several persons, learned in the Hawaiian language and customs and attached these affidavits to their petition for a rehearing.

AFFIDAVITS RE TRANSLATION.

Mr. Fred W. Beckley, one of the official Hawaiian inter-

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preters in the circuit court of the first circuit, translates this part of the will as follows:

"I, the undersigned, a leper, residing at Kalaupapa, Island of Molokai, Territory of Hawaii, do make this my last will concerning all the chattels known to be mine and in my name situate at Kalaupapa aforesaid, * * *." (33).

Mr. Beckley further says that "it is plain from the Hawaiian version that Mrs. David Nohoiea, a leper, disposes of all her personal property of whatever nature situate at Kalaupapa, Molokai, Territory of Hawaii, to her husband, David Nohoiea, * * *." (34).

Mr. C. L. Hopkins, another official Hawaiian interpreter of the circuit court of the first circuit, translates this portion of the will as follows:

"I, whose name is subscribed below, a leper residing at Kalaupapa, Island of Molokai, Territory of Hawaii, do make this as my last will concerning all property known to be mine and in my name situate at Kalaupapa, mentioned above, * * *." (36).

Mrs. Emma Nakuina, a lady of great learning in the Hawaiian language and customs who was a commissioner of private ways and water rights, and who in the execution of her duties as commissioner had frequent occasion to examine documents written in the Hawaiian language, and who for many years had made a study of the Hawaiian people, their manners and customs, (38), translates this portion of the will as follows:

"I, the undersigned, a leper living at Kalaupapa, Island of Molokai, Territory of Hawaii, I hereby make this * * * last will and testament concerning all properties (goods) known to be mine and in my name that are situated (laying) in Kalaupapa as shown above; * * *." (38).

Mr. J. S. Emerson, a gentleman born and raised in the Hawaiian Islands, and who is now sixty-three years of age, who has lived there practically all his life, and who has made a study of the Hawaiian manners and customs, (42), translates this portion of the will as follows:

"I, the undersigned, a leper, living at Kalaupapa, Island of Molokai, Territory of Hawaii, do make this my last will, with regard to all the goods or property known to be mine or held in my name situate at the above mentioned Kalaupapa, * * *." (43).

Mr. Emerson further says that "etimologically, grammatically and idiomatically the language used in this will describes property situate at Kalaupapa and that this property is personal property, as distinguished from lands * * *." (44).

Mr. Henry Smith, who for twenty-five years has been clerk in the judiciary department of the Hawaiian Islands, and who is the custodian of all wills probated in each and every judicial circuit court of the Territory, and who, during the time aforesaid, has copied and read a great many wills written in the Hawaiian language devising and bequeathing lands and personal property, and is very familiar with Hawaiian expressions in wills disposing of real and personal property (46), says:

"That affiant has read and studied the will of Mrs. David Nohoioa filed in the above entitled cause and unhesitatingly states that it disposes of personal property only and all of such property is situate at Kalaupapa." (47).

The Reverend H. H. Parker, who for many years has been and still is the pastor of an Hawaiian church, preaching to an Hawaiian congregation in the Hawaiian language, (47), translates this portion of the will as follows:

"I, the undersigned, a leper residing at Kalaupapa, Island of Molokai, Territory of Hawaii, make this my last testament

concerning all chattels known as mine and in my possession, being in Kalaupapa aforementioned; * * *." (48).

THE TESTIMONY OF A WITNESS TO THE WILL.

Mrs. Fannie Babcock, one of the witnesses to the will, in answer to interrogatories propounded to her deposed as follows:

Q. "Are you a witness to her will?" (Q. 7, p. 14.)

A. "I witnessed a will made at Kalaupapa conveying her personal property only." (A. to Q. 7, p. 18.)

Q. "Did Mrs. David Noholoa alias Hikaalani Noholoa sign the Will in your presence, and in the presence of J. K. Waiamau?" (Q. 21, p. 14.)

A. "I know her intention was to leave all her property in the settlement to D. Noholoa. Whether she signed her name or made X I don't remember." (A. to Q. 21, p. 18.)

THE SIGNIFICATION OF THE HAWAIIAN WORD "NO."

Much light is thrown upon the intention of the testatrix by her use of the word "no," in the clause at present under discussion. She says, "* * * do make this my last will '*no*' my chattels * * * situate at Kalaupapa." This word "no" is the equivalent of the Latin "de."

Andrews, the author of the Hawaiian-English dictionary says "no" is the equivalent to the preposition *of; for; belonging to; concerning.* In the translation adopted by the Supreme Court of the Territory, the word "for" is used as the English equivalent of "no," so that the faulty translation is made to read "do make this my last will *for* all property, etc." If the word "concerning" be used as the equivalent of "no" the sentence would then have some meaning. "I do make this my last will *concerning* all property known belonging to me and appearing in my name situate at Kalaupapa aforesaid." It was

concerning the property at Kalaupapa that the will was made and not concerning anything else.

By adopting the word "concerning" as the equivalent of "no" it is perfectly clear that the will was made pursuant to the regulation of the Board of Health, referred to hereafter under the fifth heading. (p. 24 post.)

Mr. Beckley adopts this word. He translates the sentence, * * * "do make this my last will *concerning* all the chattels known to be mine and in my name situate at Kalaupapa aforesaid, * * *." (33).

Mr. Hopkins adopts the same word and translates the sentence as follows: * * * "do make this my last will *concerning* all property known to be mine and in my name situate at Kalaupapa, mentioned above, * * *." (36).

Mrs. Nakuina adopts the same word and translates the sentence as follows: "* * * I hereby make this my last will and testament *concerning* all properties (goods) known to be mine and in my name that are situated (laying) in Kalaupapa as shown above, * * *." (38).

Mr. J. S. Emerson uses the words "with regard to" as the equivalent of "no" and translates the sentence as follows: * * * "do make this my last will, *with regard to* all the goods or property known to be mine or held in my name situate at the above mentioned Kalaupapa, * * *." (43).

The Reverend H. H. Parkker uses the word "concerning" and translates the sentence, "* * * make this my last testament *concerning* all chattels known as mine and in my possession, being in Kalaupapa aforementioned; * * *." (48)

It is evident therefore that the testatrix had in mind when she executed the will, only her property situated at Kalaupapa aforesaid.

THE WORDS TRANSLATED "DO HEREBY BEQUEATH THE SAME AS HEREINAFTER DESCRIBED."

The words in the original will translated, "the same," are "ia mau pono apau."

"Ia" is the demonstrative pronoun, "these."

"Mau" is the sign of the plural, and is the synonym of "na."

"Apau" corresponds to the English adjective "all."

The word "pono" is translated as follows:

By MR. BECKLEY: "said effects." (33).

By MR. HOPKINS: "those effects." (36).

By MRS. NAKUINA: "properties." (38).

By MR. J. S. EMERSON: "effects." (43).

MR. BECKLEY says of this word, "Though the word 'waiwai' may be used to mean estate or property, real or personal, or both, it is thus evident that only personal property situate at Kalaupapa was to be disposed of. This is borne out by the words 'ke hooili nei au ia mau *pono* apau o'u.' * * * 'Pono' in this sense qualifies the words 'na waiwai' and limits them to personal effects or movable goods." (34).

MR. J. S. EMERSON says, "The ideas expressed by 'na waiwai apau' in the 3rd line is later repeated in the 5th line in the expression 'ia mau pono apau.' This word *pono* cannot be used to include real estate. If therefore the testatrix limits her devise in the 5th line to pono, (goods, personal property), it is evident that when describing her devise in the 3rd line she does not intend it to convey land." (44).

Here then we have two words, "na waiwai" and "mau pono" both in the plural, which those learned in the Hawaiian language, manners and customs, unhesitatingly say refer to chattels or effects and not to lands.

THE WORDS TRANSLATED "AS HEREINAFTER DESCRIBED."

The words translated "as hereinafter described" in the translation adopted by the Supreme Court, are "ia malalo penei." They are translated as follows:

By Mr. Beckley: "as set forth below." (33).

By Mr. Hopkins: "as described below." (36).

By J. S. Emerson: "as set forth below." (43).

So that, after the use of words conveying the idea of chattels, goods or effects, the testatrix makes her meaning clearer by stating "as those effects are hereinafter described," and then goes on to say, viz., certain horses, certain houses, together with all other of her property, meaning of course thereby, the effects at Kalaupapa described above as "na waiwai," "mau pono."

THE FAILURE TO USE WORDS SIGNIFICANT OF REAL ESTATE.

It is a significant fact that the testatrix failed to use any word to signify real estate, or any word indicating where the real estate was situated. The affidavit of Mr. Henry Smith is very important in this record.

"That he is Hawaiian born and for about twenty-five years has been clerk in the Judiciary Department of the Hawaiian Islands."

"That affiant is the custodian of all wills probated in each and every Judicial Circuit of the Territory."

"That during the time aforesaid, affiant has copied and read a great many wills written in the Hawaiian language, devising and bequeathing lands and personal property, and is very familiar with Hawaiian expressions in wills disposing of real and personal property."

"That during all the time aforesaid, affiant has not copied or read any will devising realty or lands referring to them as 'waiwai' but that in all wills copied or read by affiant, the word

'waiwaipaa,' 'aina' or some word expressing fixed property has been used to devise real estate." (46, 47).

In this connection Mr. Fred Beckley says, "The word 'waiwai' if intended to dispose of real property is very seldom, if ever, used without qualifying words such as 'paa' (real), 'apana aina' (parcel of land, etc.)" (34).

Mr. Hopkins notices the fact that the testatrix does not use the word "paa" (immovable).

Mr. J. S. Emerson says, "If the testatrix had intended to dispose of real property, she would in all probability have made use of some such expressions as 'ko'u waiwaipaa' (my real estate), 'ko'u aina' (my land), 'ko'u kuleana' (my kuleana), 'ko'u pa hale' (my house lot), 'ko'u mau loi' (my taro patches), as the Hawaiians are very particular and specific in such matters." (44).

It may seem strange that the Hawaiians are particular in the use of such expressions, but this is readily to be accounted for by the fact that when the early missionaries first visited the islands, (in 1824), they found a virgin field in the Hawaiian language as far as legal expressions were concerned, for the very good reason that private property in land was unknown, and no laws existed except those hidden in the mind of this or that chief.

The American missionaries were all men of great intelligence. They started the Hawaiians right in the use of legal terms, and the Hawaiians have retained the lessons they received.

THE POSITION OF THE WORDS "AS WELL AS ALL OTHER PROPERTY OWNED BY ME," IN THE WILL.

It is important to notice in this connection that the words relied upon by Mr. Enoch Johnson, to wit, "as well as all other property owned by me," is in the same sentence with the words above discussed. Taking even the defective translation adopted

by the Supreme Court, and observing the punctuation thereof, it will be seen that the will contains but two sentences: (1) Beginning with "I, the undersigned," and ending at "forever." (2) Beginning with "Renouncing" and ending with "this."

If the words "as well as all other property owned by me," had been in a separate sentence, cut off from the sentence introduced by the words "concerning all chattels belonging to me," etc., there might have been some ground for supposing that property on the Island of Oahu was thereby devised and bequeathed, but it is contended that it is perfectly clear that the words "as well as all other property owned by me," forming as they do a part of the same sentence introduced by the words "concerning all chattels belonging to me and appearing in my name situate at Kalaupapa aforesaid," are intended to bequeath such things as household furniture, cooking utensils, wearing apparel, books, pictures, etc., which the husband of the testatrix had been accustomed to use in common with her, and which the testatrix desired should continue to be used by him.

THE WORDS USED IN THE SECOND SENTENCE.

The words translated "renouncing all claims that my relatives may set up in law to this" are also significant. The following translations are given by the experts:

MR. BECKLEY: My heirs shall not have any right to claim these at law." (33).

MR. HOPKINS: "That my family shall have no right to claim this at law." (36).

MRS. NAKUINA: "And my relatives will have no right by law to claim these (chattels being understood)." (39).

MR. J. S. EMERSON: "Moreover my relatives have no right of property in these things by which they can claim them by law." (43).

These words most certainly signify a desire on the part of

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the testatrix that the other members of her family shall not make any claim to the things at Kalaupapa and they alone are devised in the will. They seem to say to us:

"My husband and I have enjoyed these things together and after my death, I do not wish my relatives to make any claim to them, but I do wish that my husband shall have peaceable and quiet possession thereof."

THE PARTICULAR DESCRIPTION OF THE PERSONAL PROPERTY.

Upon the question of the intention of the testatrix in using the words translated "as well as all other property owned by me," it is proper to notice that she describes the personal property with great particularity. It was "a *buck-skin* horse," and a "*bay* mare," and a "*black* mare." It is hardly conceivable that she should describe these things of comparatively small value with such particularity, and then devise her real estate situate on the Island of Oahu, worth from ten thousand to thirty thousand dollars under this general description, especially where the words are found in the same sentence bequeathing all her chattels at Kalaupapa.

THIRD: *The Supreme Court of the Territory of Hawaii erred in adopting the word "property" as a translation of the words "na waiwai," instead of adopting the words "chattels" or "effects" as the English equivalent of the said words.*

The translation adopted by the Territorial Supreme Court is in part as follows:

"I, the undersigned, * * * do make this my last will *for all property* * * * situate at Kalaupapa, aforesaid." The words "for all property" are adopted as the English equivalent of the words "no na waiwai." The word "no" has been discussed in the preceding section of this brief. The word "waiwai" is a curious one. "Wai" means water, the great

source of wealth to the early Hawaiians. This word is found in combination with other words, for instance, "kanawai" means a law, primarily, a rule of property in water. Lunakanawai, means a judge, that is to say, an overseer of the property rights primarily in water. The word "waiwai," is defined by Andrews in the Hawaiian Dictionary as follows:

"Waiwai, s. Goods; property; that which is possessed or owned; property in distinction from money or cash;"

The word "*na*" is a sign of the plural. Andrews defines this word as follows:

"*Na*" Article. Standing before nouns represents the plural number; as, *ke alii*, the chief; *na alii*, chiefs or the chiefs. "Na" often answers the double purpose of a plural article (that is, a plural for all the other articles which are singular), and the sign of the plural number to the noun. As an article it is both definite and indefinite.

Our contention is that the word "waiwai," used in conjunction with this plural sign "na," shows clearly that the testatrix had in mind by the use of these words her chattels, goods or effects situate at Kalaupapa aforesaid, and she had not in mind real property or property of any kind, except that situate at the leper settlement.

A correct understanding of these words, "*no na waiwai*," especially in conjunction with the words translated "situate at Kalaupapa aforesaid" shows beyond question that the Supreme Court of the Territory was led into grave error by adopting the defective translation upon which its decision is based. A perusal of the affidavits made by those learned in the Hawaiian language and people and their manners and customs will show the importance of a correct understanding of these words.

Mr. Fred W. Beckley says, "In line 3 of the original will referring to the property to be disposed of in the following clause 'na waiwai apau i ike ia no'u a ma ko'u inoa e waiho ana

ma Kalaupapa' (all properties known to be mine and in my name situate at Kalaupapa). In the translated copy affiant has used the terms 'chattels' instead of the word 'properties,' because 'na waiwai apau' (all the properties) is used in the plural sense, the word 'na' giving the idea of plurality before 'waiwai' (goods or property) shows that the meaning was limited to chattels or personal property and was not intended to mean land or real estate. Though the word 'waiwai' may be used to mean estate or property, real or personal, or both, it is thus evident that only personal property situate at Kalaupapa was to be disposed of. This is borne out by the words 'ke hooili nei au ia mau pono apau o'u' in line 5, (I hereby bequeath all of said effects of mine). 'Pono' in this sense qualifies the words 'na waiwai' and limits them to personal effects or moveable goods. The word 'waiwai' if intended to dispose of real property is very seldom, if ever, used without qualifying words such as 'paa' (real), 'apana aina' (parcel of land, etc.). In line 11 of the original, affiant has again used the words 'chattels' for 'na waiwai' for reasons already given. In line 14 in place of 'ohana' (relatives), affiant has used the word 'heirs,' for the reason that although a person may be a relative and still not an heir, in this document the testatrix bars out all relatives from any claim to the property disposed of in the will. It is therefore evident that the word 'ohana' in Hawaiian was intended to be limited to such relatives as would be her heirs at law. If any additional reason was required to show that the testatrix intended only to dispose of chattels at Kalaupapa and that the will did not refer to chattels in any other place nor to land, it is well known that the land at Kalaupapa belongs to the government and that the settlement at that place is a public institution. It is plain therefore, that the testatrix could not have intended to dispose of land at Kalaupapa and as she only had personal effects there which she could dispose of only to persons

at the settlement, it is fair to presume that she had in mind those personal effects which she wished should go to her husband, assuming that all of her property outside of the settlement would go to her heirs at law." (34).

Mr. Hopkins translates these words "concerning all property known to be mine," and says,

"In the devising clause in this will the testatrix used the words 'ke hooili nei au ia mau pono apau o'u i olelo ia' (I do bequeath all of those effects of mine aforesaid). This clause refers to the declaratory part of her will 'no na waiwai apau i ike ia no'u a ma ko'u inoa' (all effects and property known to be mine and in my name) more particularly set out by her as to the nature thereof in the following words: 'e like me keia i hoakaka ia malalo penei,' (in accordance to those as described below). This clearly shows that the testatrix was disposing all personal property in the declaratory part of her will without any words of qualification as 'lewa' (moveable) 'paa' (immoveable); still the nature of the property disposed of by her is made certain by the use of the words 'mau pono apau' (all those effects) taken in conjunction with the schedule mentioned in the will. It is important to note that the testatrix makes use of the words 'a me na waiwai e ae a pau i ike ia no'u' (all other goods (property) known to be mine). These words being used in conjunction with the schedule of personal property bequeathed could have no other significance than that there were other personal effects at Kalaupapa which the testatrix owned but had not enumerated in the will for she being possessor of houses would ordinarily have furniture, cooking utensils, etc., which should go with the houses as a matter of course for the benefit of her husband, her beneficiary, and in fulfilment of her declaration 'manao maikai' (just intention) towards her husband. The testatrix makes her intention very clear as to the location of the property to be disposed of by the words 'no na

waiwai apau i ike ia no'u a ma ko'u inoa e *waiho ana ma Kalaupapa'* (concerning all property known to be mine and in my name *situate at Kalaupapa)* so that the words 'a me na waiwai e ae apau i ike ia no'u' (and all other goods known to be mine) could only mean such as the testatrix possessed and owned in Kalaupapa and at no other place, and as to these things the testatrix admonished her family or heirs that they shall have no rights or claim in them at law." (36, 37).

Mrs. Nakuina translates the words "concerning all properties (goods)" and says, "That by no translation of this will conveying the meaning of the testatrix as expressed in Hawaiian, can real estate be included in the property disposed of, nor can any property be included outside of that situate or lying at Kalaupapa." (39).

Mr. J. M. Poepoe says in this regard, "That while the word 'waiwai' may include both real and personal property, the Hawaiian expressions used in this will permit of only one interpretation, that is, that the property disposed of in the will is personal property situate at Kalaupapa and at no other place." (40).

Dr. N. B. Emerson says in this connection, "The word 'waiwai' is capable of bearing the meaning 'real estate' but as used by the testatrix in the third and eleventh lines and under the limitations imposed upon it by her, this word means personal property. And under the like limitations it is limited to her personal property at Kalaupapa, Island of Molokai. If she had intended to have the instrument apply to property that she might have owned elsewhere, she would have named the place or would have used some phrase indicating a broader application of the will." (42).

Mr. J. S. Emerson, perhaps one of the most learned Hawaiian scholars in the world, translates the words in question, "with

regard to all the goods or property," and thus discusses the words in question:

"That etimologically, grammatically and idiomatically the language used in this will describes property situate at Kalaupapa and that this property is personal property, as distinguished from lands for the reason that,

"(1) Though the word 'waiwai' appearing in the third line of the will is a word which is capable of including all kinds of property, whether chattels or real estate, it is in this connection limited to the idea of chattels only because it is restricted by the phrase 'e waiho ana ma Kalaupapa' and under this restriction it will be seen that only personal property is referred to.

"(2) The ideas expressed by 'na waiwai apau' in the 3rd line is later repeated in the 5th line in the expression 'ia mau pono apau.' This word *pono* cannot be used to include real estate. If therefore the testatrix limits her devise in the 5th line to pono, (goods, personal property), it is evident that when describing her devise in the 3rd line she does not intend it to convey land.

"(3) The words 'na waiwai' are restricted by the phrase in the 6th line 'e like me keia i hooakaka ia malalo penei' (according as set forth below, to-wit), plainly indicating that all the property intended to be disposed of was situated at Kalaupapa.

"(4) The property specifically described is personal property. There is nothing to show that the testatrix intended to include real property, or to suggest the possibility of including in the expression 'a me na waiwai e ae apau i ike ia no'u' in the tenth and eleventh lines any property outside of her personal property at Kalaupapa.

"(5) If the testatrix had intended to dispose of real property, she would in all probability have made use of some such expressions as 'ko'u waiwaipaa' (my real estate), 'ko'u aina' (my land), 'ko'u kuleana' (my kuleana), 'ko'u pa hale' (my house lot), 'ko'u mau loi' (my taro patches), as the Hawaiians are very particular and specific in such matters.

"(6) There can be no doubt that the horses and one wooden house disposed of were at Kalaupapa. It was a wooden house not a brick house attached to the soil. 'Na hale e ae' (and other houses) in the tenth line were probably the out-houses, but whether out-houses or not, they were at Kalaupapa and at no other place.

"(7) The words 'na waiwai' in the tenth and eleventh lines constitute the same phrase as in the third line and were undoubtedly used to describe the same property and the words 'situate at Kalaupapa' must follow by implication the phrase 'a me na waiwai e ae apau i ike ia no'u' in the tenth and eleventh lines.

"(8) At the end of the will is this significant sentence 'aole hoi he kuleana o ko'u mau ohana e koi mai ai i keia mau ke kanawai' (moreover my relatives have no right of property in these things by which they can claim them at law,) that is, the things, the personal property situate at Kalaupapa which she gives to her husband and which her relatives are not to claim (as distsinguished from real estate or any other form of property not at Kalaupapa) the implication being that such other property is to go to her heirs.

"(9) The words 'a me na wa[illegible]i e ae apau' in the tenth and eleventh lines constitute a phr[illegible]e contained in the sentence describing the property situate at Kalaupapa. Had it been her intention to devise all her property a new sentence would have been required or else she should have employed some word or

phrase to show that the phrase 'situate at Kalaupapa' was not intended to limit the words 'ame na waiwai e ae apau.' No such words appear and it is plain that the phrase 'all other property belonging to me' refers to all other personal property at Kalaupapa, and was intended to apply to only such personal effects as omitted from the schedule, such as furniture, bric-a-brac, etc., in her house, and which she had enjoyed together with her husband; these things she desired him to continue to enjoy after her death.

"(10) Familiarity with Hawaiian method of expression and Hawaiian ideas would almost make it imperative to construe the words 'na waiwai' as used in the will to mean chattels. It is hardly possible that a Hawaiian would intend to dispose by will of all real as well as personal property and enumerate certain chattels and not specifically refer to his lands, especially if the lands were of great value.

"(11) To read a devise of real estate into this will makes it ambiguous, whereas if the will does not devise real estate it is plain. It would be foolish for the testatrix to specifically describe personal property situate at Kalaupapa and then dispose of all her property wherever situated. Had she intended to dispose of all property other than personal property at Kalaupapa, she would have left out all mention of the specific things and made use of some such expression as 'ko'u waiwai apau loa ma na wahi apau e wailio ana' (all my property wherever situated) or 'ko'u waiwai apau loa, ko'u waiwai lewa ame ko'u waiwai paa' (all my property both real and personal), leaving out all reference to the property which she owned located at Kalaupapa.

"(12) The word 'loa' is a very expressive word in Hawaiian and while the use of this word in addition to the word 'apau' in line 11 would not make any difference in the grammatical construction yet its omission is a slight indication that the testatrix did not have in mind that all of her property should be affected by the will." (44, 45, 46).

FOURTH: *The Supreme Court of the Territory of Hawaii erred in holding and deciding that words of the will translated "also all the other property known to be mine," showed the intention of the testatrix to dispose of her Honolulu property.*

This assignment of error goes to the foundation of the whole question, it has been covered in part by the first, second and third headings of this brief.

The word used for property in this phrase is the same as that used in the introductory part of the will to wit, "waiwai."

The phrase is thus translated:

MR. BECKLEY: "And all other chattels known to be mine." (33).

MR. HOPKINS: "And all other property known to be mine." (36).

MRS. NAKUINA: "And any other goods (chattels) known to be mine." (39).

MR. J. S. EMERSON: "Together with all the goods or property known to be mine." (43).

MR. HOPKINS says, "It is important to note that the testatrix makes use of the words 'a me na waiwai e ae a pau i ike ia no'u' (all other goods (property' known to be mine). These words being used in conjunction with the schedule of personal property bequeathed could have no other significance than that there were other personal effects at Kalaupapa which the testatrix owned but had not enumerated in the will for she being possessor of houses would ordinarily have furniture, cooking utensils, etc., which should go with the houses as a matter of course for the benefit of her husband, her beneficiary, and in fulfilment of her declaration (manao maikai) just intention towards her husband." (37).

MR. J. M. POEPOE says, "That while the word 'waiwai' may include both real and personal property, the Hawaiian

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expressions used in this will permit of only one interpretation, that is, that the property disposed of in the will is personal property situate at Kalaupapa and at no other place."

Mr. J. S. Emerson says, "The words 'na waiwai' in the tenth and eleventh lines constitute the same phrase as in the third line and were undoubtedly used to describe the same property and the words 'situate at Kalaupapa' must follow by implication the phrase 'a me na waiwai e ae apau i ike ia no'u' in the tenth and eleventh lines."

Fifth: *The Supreme Court of the Territory of Hawaii erred in holding that the will in question passed property situate elsewhere than at Kalaupapa and failed to consider the situation of the testatrix at the time of making the will and especially failed to consider that she was living at the leper settlement at Kalaupapa, a Government institution.*

It is elementary that in arriving at the intention of a testator, his circumstances, surroundings and conditions at the time of the making of the will can be considered for the purpose of explaining any latent ambiguity.

"In regard to a will of personalty, in an especial manner, the law of the place of the testator's domicil governs the distribution thereof, and will govern in the interpretation of wills thereof, unless it is manifest that the testator had the laws of some other country in view."

Harrison v. Nixon, 9 Pet. 483.

"The validity of devises, as against the heirs at law, depends upon the law of the State where the lands lie; and the validity of bequests, as against the next of kin, upon the law of the testator's domicil."

Jones v. Habersham, 107 U. S. 174.

"No rule is better settled than that the whole will is to be taken together, and is to be so construed as to give effect, if it be possible, to the whole."

Smith v. Bell, 6 Pet. 68.

Robinson v. Adams, 4 Dall. Appx. XII (Ct. Er. & App. Del.).

"In the construction of ambiguous expressions, the situation of the parties may very properly be taken into view."

Smith v. Bell, 6 Pet. 68.

"In the construction of wills, the law does not decide upon conjectures, but upon plain, reasonable, and certain expressions of intention, found on the face of the will."

Wright v. Page, 10 Wheat 204.

"A general intent is of weight in determining what was intended by particular devises or bequests."

Given v. Hilton, 95 U. S. 591.

The unfortunate inmates of the leper settlement are provided by the Board of Health with all the necessaries of life, including a small sum of money which they can save or spend as they see fit. It is possible perhaps for them to save a little of this money, and there is no reason why they should not receive gifts and presents from their more fortunate friends and relatives in the outside world. It is as true today as it was in the days of Jesus that a leper is considered unclean. He is shunned by his fellowmen. Everything he touches is supposed to be contaminated with the dreadful disease.

Personal property once at the settlement is there forever. It can never be taken away and used by others not afflicted with the disease. Among the Hawaiians this dread of infection is perhaps not as keenly felt as among the other races, and if it were possible to have the effects of a deceased leper sent to his

relatives or friends, these effects would in all probability be used without being first subjected to disinfection. Even to this day letters written by the unfortunates to their friends must be disinfected before they can be sent to the outside world. It is doubtless for the purpose of preventing the spread of the disease, that the Board of Health has formulated rules with regard to the property of the deceased lepers. The rules are set forth in the petition for rehearing as follows:

"Section Eight: Lepers are permitted to build houses for their own use and to select building sites subject to the approval of the superintendent of the settlement; provided however, that if at any time the Board of Health desires any such land for any purpose, the Board shall have the right to remove any house thereon to another site. All expenses of moving shall be borne by the Board, and the Board shall pay to the owner of the house all actual damage caused him by reason of such removing."

"Section Nine: They may sell or give away or devise by will such houses, but only for the use and occupation of other lepers, and with the knowledge and approval of the Board of Health."

"Section Eleven: Property left by lepers who have died without leaving a will, and who have no legal heirs at the settlement, will be sold at public auction, and the proceeds, after deducting the lawful expenses will be remitted to the president of the Board of Health, for the benefit of the legal heirs of the deceased, and if after due advertisement in an English and Hawaiian newspaper no lawful claimant shall appear, such proceeds, after deducting the expense of advertising, shall be turned over into the public treasury as Government Realizations."

"Section Twelve: Lepers may leave their personal property and effects at the settlement by will, but only by a written will,

signed in the presence of not less than two witnesses, one of whom shall be the superintendent of the leper settlement, or other officer authorized by the superintendent."

The will in question was, by virtue of Section 12, witnessed by the assistant superintendent of the leper settlement and by another patient, Mrs. Babcock. It is lacking in the words of solemnity usually found in wills. The customary "In the Name of God, Amen," is not seen, and it may be for this reason among others that those versed in the manners and customs of the Hawaiians have stated under oath that this will bequeathes only personal property at the leper settlement.

We respectfully contend that a majority of the Justices of the Territorial Supreme Court were in error in overlooking this important fact. It is true that it was not adverted to in the briefs filed in the first place in said court, but on the petition for re-hearing the rules of the settlement were brought to the attention of the court. These rules and this feature received no consideration from a majority of the justices. The case was submitted on motion for re-hearing after the hour of noon and decided within two hours thereafter, the chief justice dissenting. There being no counter affidavits, the affidavits filed by the appellant must be taken as true, and forces the court to hold that the will is limited to chattels at Kalaupapa.

We contend that had this feature of the case been carefully considered, it would have appeared abundantly clear that the will was one provided for by the rule (Section 12) above referred to.

SIXTH: *The Supreme Court of the Territory of Hawaii erred in holding and deciding that the rule "ejusdem generis" does not apply in the construction of this will.*

The Territorial Supreme Court held in its decision that to apply this rule to the will in question, would be an application

The 11th clause also associated "all property, money and effects" and as the other disposes of what had been omitted, this disposes of such as had been specified and given to the widow, which remained at her death. The words are evidently used in the same sense in both paragraphs, and bear an obvious relation to each other. Unless the testator intended to limit the significance and scope of the expression as used in both clauses, why should he have added the qualifying words "that may be left at her decease," in the latter? Manifestly, as land is not subject to a contingency, since it *must*, not *may be*, left, when the life estate expires, he intended such goods as might be destroyed or consumed by the preceding owner, but in fact are not, but remain for the bequest in remainder to operate upon.

Williams v. Parker, 84 N. C. 90.

No better argument could be employed to illustrate this point than that employed in *Andrews v. Schoppe*, 24 Atl. 807. In this case, the testator commences the description of the property which it was her intention to dispose of by this clause, with the use of the general term, "all my housekeeping articles." The evident desire of the testator, as manifested from the language used, was to give her niece everything which pertained to her household equipment, and which would render her home life and domestic duties more comfortable and agreeable. In furtherance of this purpose, she adds to the general description of her bequest the specification of what her general description includes, namely all her "household furniture, beds and bedding, kitchen and table furnishings, books and pictures, all my wardrobe, and all other articles of personal property in the house at the time of my death, belonging to me." These specific words of enumeration which the testatrix had used, and which precede the closing portion of the bequest, could not have added anything to the scope of her bequest if she intended this last

clause to cover and pass her entire personal property. If by the language, "all other articles of personal property," she intended to embrace everything which, in the broadest legal signification of the term, could be the subject of ownership in personal property, the enumeration of household articles, house furniture, beds and bedding, kitchen and table furnishing, books, pictures and wardrobe, was entirely superfluous. These words, were we to adopt that understanding of her intention, would be meaningless and useless verbiage. If she had intended to give her niece her entire personal property in the house, in terms unrestricted, she might have easily said so without any specific enumeration.

We desire to call the court's attention to several cases, which for their value we quote more or less in full:

"Item 2: To my niece (I. H. S.) I give all my housekeeping articles, including all my household furniture, beds, bedding, kitchen and table furnishings, books and pictures, all my wardrobe, and all other articles of personal property in the house at the time of my death belonging to me: * * *

"At death left four promissory notes.

"No one for a moment will controvert the assertion of the learned counsel that the term 'personal property' in its broadest legal significance, included everything the subject of ownership aside from lands and interest in lands as goods, chattels, moneys, notes, bonds and choses in action. In its ordinary and popular use however it is oftentimes used in a more restricted sense, embracing goods and chattels only * * *. But however this may be, the evident intention of the testatrix, as disclosed by the language of the will itself, taken in connection with this term, was that she understood and used the term 'all other articles of personal property' in its restricted sense. * * * . The language of the bequest is not simply and unqualifiedly a gift of 'all her personal property.' * * * The court cannot

sever those words from other portions of the clause and give them a construction regardless of their connection with other and important qualifying words. The bequest must be construed by taking the whole sentence under consideration, and from all the language employed, and not from a disjointed portion only. * * *

"In ascertaining the real intention of a testator there is a rule applicable in the construction of wills, as well as of statutes, that where certain things are enumerated and a more general description is coupled with the enumeration that description is commonly understood to cover only things of a like kind with those enumerated. This is because it is presumed that the testator had only things of that kind in mind."

Andrews v. Schoppe et al.

"Devise to wife of 'every article of household furniture in or on said premises, including' (then follows enumerated articles) 'and every article of personal property in and about said homestead, or wherever found belonging to my estate.' Contended the bonds were included."

Held "That ejusdem generis so far as it aids in the construction of this will, forbids the construction contended for. * * * Ordinarily it limits the meaning of general words to things of the same class as those enumerated under them."

Benton v. Benton, 63 N. H. 289-295.

"This is an action brought to cover the amount of a bond in favor of the testatrix which the executor had received. The plaintiff claimed it as a legacy under the following words in the will: 'Time. I give and bequeath unto Mary Jackson, wife of William Jackson, all of my wearing apparel, household furniture, plate, linen, books and every removable whatsoever.'

"By the Court: 'We have no doubt at present. The meaning of the testatrix is plain enough. If the plaintiff's con-

struction were right, all the rest of the will would be destroyed. In this case, movable must be confined to things of the same nature with those before specified.' "

Jackson v. Vanderspreigle's Executor, 2 Dall (U. S.) 142.

"The first object is that Kosciusko did not die intestate as to his personal property in the United States and that the same passed by the second articles of the will 1817 to N. and Madam Z. Z. * * * The wills then of 1798 and of 1806 were revoked by the will of 1816 and as the testator did not make in it any disposition of his American funds, he died intestate as to them, unless the second article in the will of 1817 has the effect of a residuary bequest to the persons named in it.

"It is 'And I bequeath all of my effects, my carriage and my horse included, to Madam and to Mr. Z. Z. above named.' From its place in the will of 1817 and from the connection of the words 'all my effects with my carriage and horse included' it would be a very strained construction to make the words 'all of my effects,' comprehend his personal estate in the United States, it being neither alluded to in any way in this will nor in that of 1816. Except in so far as it might under the will of 1816 have been applied to the payment of the legacies given in that will upon the failure of the funds upon which they were first charged. Effects in French, or the word 'effects,' has the same meaning in common parlance and in law that it has in English. Its meaning properly in either, when used indefinitely in wills, but in connection with something particular and certain, is limited by its association to other things of a like kind. It is from the subject matter of its use, that intention of something else is to be implied; and that of course may be larger or less. In some instances in wills, the word has carried the whole personal estate. When in connection with words

of themselves of larger meaning, or of fixed legal import, as there were in the case of *Bosley v. Bosley*, decided at this term of the court, such a clause in a will is residuary."

Ennis v. Smith, 14 How. 400, 418, 419, 420, 421.

See also:

Dole v. Johnson, 3 Allen 364.
Bins v. Putnam, 64 N. H. 554, 15 Atl. 138-140.
Vincent v. Murray, 73 N. C. 15-20.
Farish v. Cook, 78 Mo. 212-217.
Appeal of M. L. Reakert, 173 Pa. 368.
Bond v. Martins Adm., 76 S. W. 326.
Gallagher v. McKeague, 103 N. W. 233.

Considering the surroundings and circumstances of the testatrix it is difficult to say how the rule could be more properly applied than in the case at bar. For if there ever was a case calling for the application of the rule, we respectfully submit it is this case.

SEVENTH: *The Supreme Court of the Territory of Hawaii erred in denying the motion for rehearing in said cause.*

When this cause was taken to the Territorial Supreme Court on appeal from the circuit judge, it seems to have been taken for granted that the translation of the will made by the circuit judge was a correct one and no discussion of the words of the will was had before the court. It remained for the court itself to state that the translation was "evidently defective." Briefs were filed and for some reason or other oral arguments before the Territorial Supreme Court were dispensed with.

The court handed down a decision, written by Mr. Justice Hartwell, which at any rate is extremely brief. When the petition for rehearing was filed, with the affidavits in support of the

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same, briefs were filed, and a short oral argument had, and the court was in a position to have the whole matter clearly before it.

It is respectfully submitted that this court should hold that Hikaalani Hobron Noholoa died intestate as to all her property except that at Kalaupapa, and that the Supreme Court of the Territory of Hawaii should be directed to order accordingly.

Respectfully submitted,

(Sig.) David L. Withington

" J. Alfred Magoon

" J. Lightfoot

Attorneys for Appella

Dated, Honolulu, February 4th, 1908.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1908.
No. 174.

KAIMIOLA NAKOOKOO GRAY,
Appellant,

vs.

DAVID NOHOLOA,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF HAWAII.

BRIEF FOR APPELLEE.

WILLIAM L. STANLEY,
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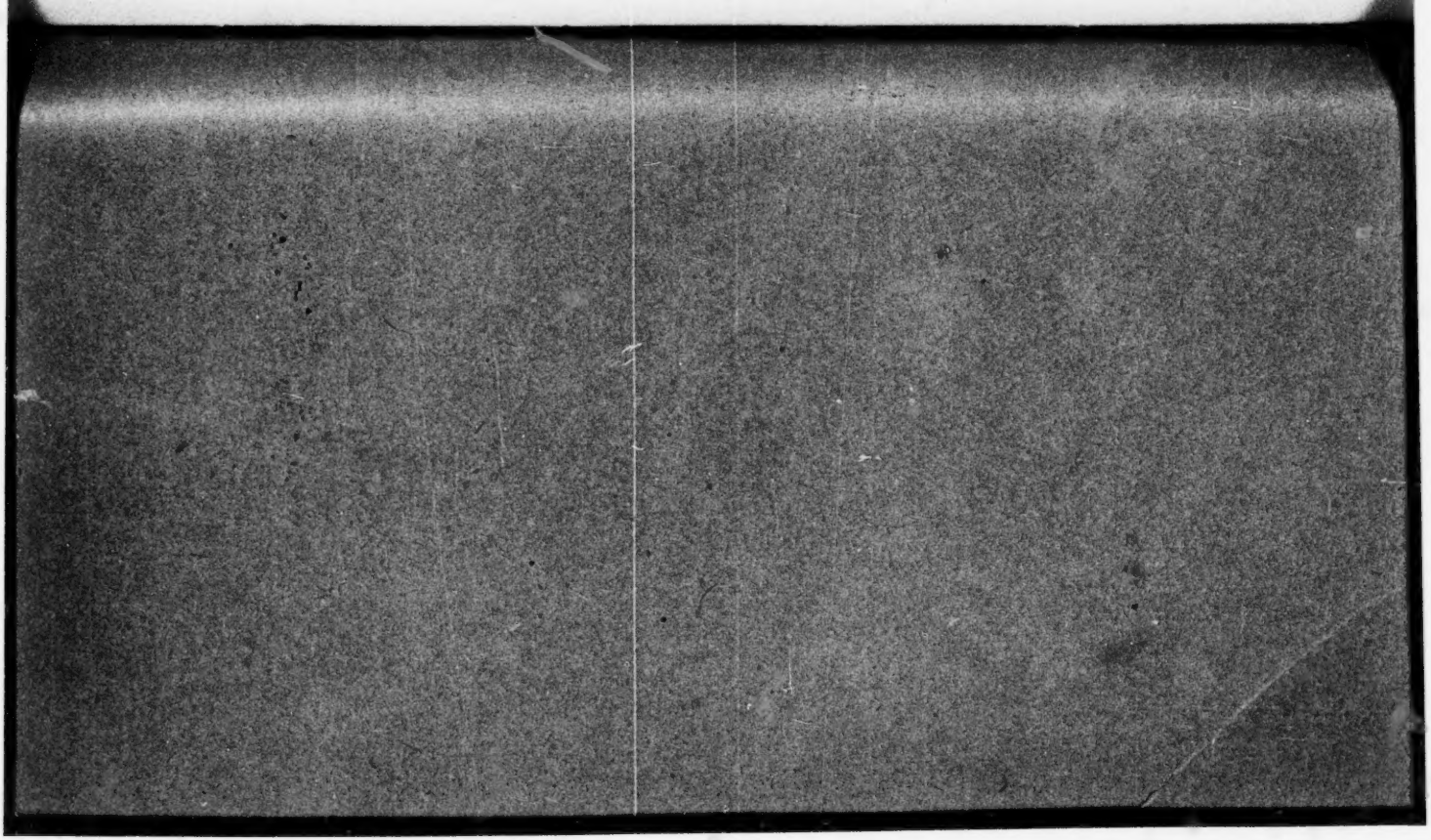

In the Supreme Court of the United States.

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No. 174.

KAIMIOLA NAKOOKOO GRAY,
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BRIEF FOR APPELLEE.

This case came to the Supreme Court of the Territory of Hawaii upon appeal of the appellant herein from the decision of the Circuit Judge of the Circuit Court of the Second Circuit of the Territory, sitting in probate, refusing to appoint the nominee of the appellant herein administrator of the property as to which it was claimed by the appellant herein that one Hikaalani Hobron Noholoa, deceased, had died intestate. The will of the said deceased had already been admitted to probate and one Enoch Johnson appointed administrator with the will annexed. (R. pp. 22-24.)

The will admitted to probate was in the Hawaiian language, the translation of which as found by the probate judge at the hearing upon the petition for its admission to probate is as follows:

"I, the undersigned, a leper residing at Kalaupapa, Island of Molokai, Territory of Hawaii, do make this my Last Will for all property known belonging to me and appearing in my name situate at Kalaupapa aforesaid, with good will (or intention,) do hereby bequeath the same as hereinafter described: One gray horse, one bay mare; one black mare; one frame wooden house and other houses owned by me, as well as all other property owned by me, to my husband David Noholoa, residing at Kalaupapa aforesaid, to him and to his heirs, admin-

istrators and executors forever. Renouncing all claims that my relatives may set up in law to this." (R. p. 24.)

It was claimed that this will devised the property of the deceased situate at Kalaupapa only and left intestate other property, both real and personal, situate elsewhere in the Territory. The Supreme Court of the Territory, holding that the will covered *all property wheresoever situated* belonging to the deceased, sustained the decision of the probate judge.

The appellant relies upon two grounds: one, that the will was not properly translated in the probate proceedings and that if properly translated it in terms would cover the property situate at Kalaupapa only; the other, that in any event the legal construction placed upon the translation adopted is erroneous.

ARGUMENT.

It is submitted on behalf of the appellee that the first ground is not open to the appellant upon this appeal.

In the first place, upon the hearing upon the appellant's petition, the translation of the will as found by the probate judge in the admission of the will to probate was offered in evidence by the appellant and is the only evidence offered upon the point at that hearing. (R. p. 6, line 25.) As that hearing was entirely independent of the proceedings for admission of the will to probate (in which also the translation adopted was uncontested), it follows as a matter of course that upon appeal, for the first time, a question as to the correctness of the translation could not be raised. The mere fact that the translation adopted was the only evidence offered upon the meaning of the will should in itself be conclusive against any attempt to secure a change in the translation upon appeal. The additional fact that that evidence was offered by the appellant herself is unquestionably conclusive upon the question.

In the second place, the translation of the will is purely a question of fact. That question has already been passed upon by two courts, the probate judge and the Supreme Court of the Territory, and upon the question both courts have reached the same conclusion. Therefore, in accordance with the practice of this court, so well settled as to make the citation of authorities upon the point unnecessary, the question has been finally settled and will not be considered by this court.

However, as counsel for appellant has urged the defectiveness of the translation at so much length in his brief, we shall consider the merits of that claim.

The first error assigned quotes the language of the decision of the Supreme Court of the Territory that the translation of the will is "evidently defective." (R. p. 56.)

This language of the court is as follows: "The original of the will shows more clearly than does the evidently defective translation that the intention was to dispose of *also* all the other property known to be mine." (R. p. 28.) This language does not, however, aid the contention of the appellant, for the court emphatically states that the original of the will shows more clearly than the translation the intention of the testator to devise all property belonging to her wherever situate. In other words the defect in the translation according to the court is in not showing as clearly as the original of the will the incorrectness of the construction urged by the appellant.

In support of a motion for a rehearing addressed to the Supreme Court of the Territory after its decision, the appellant produced a number of affidavits by persons purporting to be scholars of the Hawaiian language, which it is contended show the defectiveness of the translation. (R. pp. 29-49.)

These affidavits are ex parte and in any event are insufficient to support a reversal of the decision of the court below. We shall consider them in the order in which they appear in the record.

AFFIDAVIT OF FREDERICK W. BECKLEY (R. p. 32).

The deponent translates the final clause of the description of the property devised by the will "and all other *chattels* known to be mine" as opposed to the translation adopted by the court "as well as all other *property* owned by me." While admitting that the word "*waiwai*" used in the original of the will may be used to mean estate or property, real or personal, or both, the deponent concludes that because the word is preceded by the word "*nui*" denoting plurality, therefore the testator must have meant chattels. We submit, however, that the idea of plurality in itself does not establish the fact that real property was not included. The plural of the word property is as a matter of the use of English quite as applicable to real as to personal property.

The deponent relies also upon the word "*pono*" apparently assuming that the word denotes effects, and therefore by reference back to the word "*waiwai*" in the clause translated by him, "I hereby bequeath all of said effects of mine," indicates that the word "*waiwai*" was limited to chattels. That conclusion may be sound if the word "*pono*" is correctly translated

to mean effects in view of the fact pointed out in the affidavit, that the only property situate at the leper settlement that could have been owned by the testator would be personal property. The word "pono" does not refer to the word "waiwai" as used in the final clause of the description of the property devised where alone the translation of the word "waiwai" is of importance in the issues of this case. It therefore has no tendency to show that the word "waiwai" as there used was not intended to have a broader meaning including real property. If the word "waiwai" as there used is capable of meaning real as well as personal property, the statement of the deponent that it is evident that personal property at Kalaupapa only was to be disposed of is merely the opinion of the deponent as to the construction that should be placed upon the language of the will, which is a matter within the province of the court alone.

The affidavit does not therefore afford any ground for the contention of the appellant.

AFFIDAVIT OF C. L. HOPKINS (R. p. 35).

The deponent's translation does not differ in any material particular from the translation adopted by the court. The affidavit deals solely with the construction to be placed upon the language of the will so translated, a pure question of law upon which the court will not consider the opinion of any witness.

AFFIDAVIT OF EMMA M. NAKUINA (R. p. 37).

The deponent gives as her opinion, unsupported by any explanation or reason, that the will cannot be translated to include real estate. The statement that no property other than property at Kalaupapa is included in the language of the will is again a matter of legal construction and cannot be considered.

AFFIDAVIT OF A. M. POOPOE (R. p. 39).

The deponent admits that the word "waiwai" may include real and personal property, but states that the language of the will permits of but one interpretation, that the property devised is personal property situate at Kalaupapa only. The deponent's opinion is unsupported by explanation or reasons and is evidently an attempt to give a legal construction to the will, which is inadmissible.

AFFIDAVIT OF N. B. EMERSON, M.D. (R. p. 11).

The deponent admits that the word "waiwai" is capable of bearing the meaning "real estate" but as a matter of construction asserts that the word as used in the will is limited to personal property situate at Kalaupapa. In other words, admitting the translation adopted by the court, the deponent expresses his opinion upon the legal construction that should be placed upon the instrument. This the court cannot consider.

AFFIDAVIT OF J. S. EMERSON (R. p. 12).

The deponent's translation of the will is the same in effect as that adopted by the court and the deponent further expressly admits that the word "waiwai" used in the will may include all kinds of property, real as well as personal. The affidavit is merely an extended argument in favor of the view that the language of the will construed as a whole indicates the purpose of the testator to devise her personal property at Kalaupapa only. It is therefore of no value in support of the appellant's contention.

AFFIDAVIT OF HENRY SMITH (R. p. 16).

It can hardly be seriously contended that because this deponent has never seen a will in which the language used in this will was used to devise real estate, therefore it should be held that the language as used cannot include real estate. Possibly the deponent is quite as mistaken in his reading of other wills as we contend he is mistaken in the reading of this will. The only additional comment made in the affidavit is the expressed opinion of the deponent upon the construction of the instrument. It is for that reason inadmissible.

AFFIDAVIT OF J. ALFRED MAGOON (R. p. 17).

This is a hearsay statement of the translation made by a third person and states no reasons for the translation adopted.

Thus the affidavits upon which the appellant relies are contradictory upon the translation of the word "waiwai," some of them expressly admitting that the word is capable of the meaning attached to it in the translation adopted by the court. Clearly any expression of opinion upon the limitations upon the word by reference to the context of the will, will not be considered by the court, and it is clearly just as inadmissible

whether expressed in the form of *ex parte* affidavits or as in the testimony of Mrs. Fanny Babcock that the will witnessed by her conveyed personal property only. (R. p. 18.) The material upon which the appellant relies, therefore, in so far as it is material to the question in issue is conflicting at the best and therefore cannot justify the adoption of a translation different from that adopted by the courts below.

LEGAL CONSTRUCTION OF TRANSLATION ADOPTED.

The question presented to this court therefore resolves itself into one of the legal construction of the translation offered originally to the probate judge by the appellant herself at the hearing upon her petition and adopted both by the probate judge and the Supreme Court of the Territory. In the consideration of that question, other decisions afford but slight, if any, assistance.

The Supreme Court of the Territory held that the final clause of the description of the property devised is general and unrestricted and therefore includes all property that belonged to the testator at the time of her death wheresoever situate.

Stripped of unessentials, the will reads as follows:

A. I make my will for my property at Kalaupapa

B. and devise

1. the same described as follows: one gray horse, one bay mare, one black mare, one frame wooden house and other houses owned by me,
2. as well as all other property owned by me

C. to my husband David Nahoa.

The appellant's case rests upon the contention that the clause "as well as all other property owned by me," is restricted by the opening recital of the will "I make my will for my property at Kalaupapa" to property at Kalaupapa. That contention overlooks two vital features of the will.

In the first place, the will is inartistically drawn. It cannot be said that the recital was made for the purpose of restricting the purport of the will. On the contrary, it most probably represents merely what was uppermost and specifically in the mind of the testator, namely, the articles of property immediately surrounding her, which were movable in their nature and therefore called for specific description.

In the second place, the recital is immediately followed by the devise of the property in Kalaupapa referred to in the recital by a general reference back to the recital which is then followed by a specific description showing what the testator's property in Kalaupapa consisted of. When the specific description of the property in Kalaupapa already referred to in a general term, is completed, the testator adds another general clause "as well as all other property owned by me." In itself, the clause is unrestricted and would be sufficient to cover all property belonging to the testator wherever situated. That it is not restricted by the opening recital of the will is, we submit, unquestionable, because prior to it the testator had already used a general term covering the property referred to in the recital together with a specific enumeration of the articles of which that property consisted. The final clause of the description is at least coördinate with the first general reference to the property mentioned in the recital.

Finally, the construction urged by the appellant cannot in any view be said to be clear. We submit that on the contrary the construction urged by the appellee and sustained by both courts below is clearly correct; if, however, there be any doubt as to the correctness of that construction, we submit that the doubt must, under the rule of presumption against partial intestacy, be resolved in favor of the appellee.

Respectfully submitted,

WILLIAM L. STANLEY,

CLARENCE H. OLSON,

HENRY HOLMES,

Attorneys for Appellee.

GRAY *v.* NOHOLOA.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF HAWAII.

No. 174. Submitted April 20, 1909.—Decided May 17, 1909.

Which is the correct English translation of a will written in the Hawaiian language is a pure question of fact, and in this case this court follows its usual course in regard to the findings of fact of both the lower courts and adopts the translation which both found to be correct.

The will of a childless testatrix, who lived with her husband in the

leper colony of Hawaii leaving all her property to her husband, was rightfully construed as relating to all property whether situated in that colony or outside thereof, it not being presumed that she died intestate as to any of her property or that she would limit her bounty to her husband by omitting any of her property.
18 Hawaii, 265, affirmed.

THE appellant herein appeals from the decree of the Supreme Court of the Territory of Hawaii. The facts relating to the case are as follows:

Hikaalani Hobron Noholoa was a resident of the island of Molokai, Territory of Hawaii, which is called the leper settlement, and was a leper, about seventy-five years of age, at the time of her death, on or about the twenty-ninth of June, 1906. Deceased left a husband, who was also a resident of the settlement and a leper, and a niece, the appellant, Kaimiola Nakookoo Gray, also residing on the island, and two grandnieces, being minors, residing in Honolulu. She left a will, written in the Hawaiian language, of which the following was taken as a translation by the courts below:

"I, the undersigned, a leper residing at Kalaupapa, Island of Molokai, Territory of Hawaii, do make this my Last Will for all property known belonging to me and appearing in my name situate at Kalaupapa aforesaid, with good will (or intention,) do hereby bequeath the same as hereinafter described: One gray horse, one bay mare; one black mare; one frame wooden house and other houses owned by me, as well as all other property owned by me, to my husband David Noholoa, residing at Kalaupapa aforesaid, to him and to his heirs, administrators and executors forever. Renouncing all claims that my relatives may set up in law to this."

The above will was duly admitted to probate in the Circuit Court of the Second Circuit of the Territory on the twelfth day of December, 1906, and, upon petition duly made, the court granted letters of administration with the will annexed to Enoch Johnson, who thereupon received such letters and entered upon his duties as such administrator.

After the application on the part of the husband for the probate of the will of his wife, and after the filing of the same with the clerk of the Circuit Court, but before the granting of letters of administration to Enoch Johnson, as prayed for by the husband, a petition was filed with the same court by Kaimiola Nakookoo Gray, the appellant herein, and a niece of the deceased testatrix, in which petition it was averred that the will of the testatrix, which was offered for probate, did not dispose of any property other than which was within and at the leper settlement, and that the testatrix at the time of her death owned other property outside of the settlement of the assessed value of several thousand dollars, and it was averred that there was no person who could lawfully demand settlement of the people who had possession of the property outside of the settlement, and therefore the petitioner asked for the appointment of some suitable person as administrator of the estate of which decedent died intestate, and that due notice might be given thereof.

Subsequently to the filing of this petition the probate court duly admitted the will as translated by the court to probate, and also denied the petition of the niece for letters of administration upon that portion of the land of deceased which she asserted was not included in the will. The translation of the will which she put in evidence in her proceeding, was the same one that was made by the court in the proceeding to admit the will to probate.

Kaimiola Nakookoo Gray duly appealed from the order or decree of the probate court refusing to grant letters of administration, as petitioned for, and the appeal was duly argued, without objection, in the Supreme Court of the Territory upon the same translation of the will, and the decree was affirmed.

A motion was then made for a rehearing of the case, and upon that motion, for the first time, *ex parte* affidavits were used on behalf of the appellant in regard to the translation of the will of testatrix. These affidavits asserted that the translation adopted, and most of it made, by the probate court, and

adopted by the Supreme Court upon the hearing, without protest or question on her part, was not an accurate translation, and the following was asserted to be the true translation:

"I, the undersigned, a leper residing at Kalaupapa, Island of Molokai, Territory of Hawaii, make this my last testament concerning all chattels known as mine and in my possession, being in Kalaupapa aforementioned; with sane mind I bequeath all those said goods of mine described as follows, to wit,

"1 Creamed colored horse,

"1 Bay mare,

"1 Black mare,

"1 Wooden house together with certain other houses, and all other chattels belonging to me, to my husband, David Noholoa, residing at said Kalaupapa and to his heirs and assigns forever. My heirs shall not have any right to claim these at law.

"In witness whereof I hereunto subscribe my name this 18th day of November, 1901."

The court refused to accept such translation or to set aside or correct the translation already made and adopted by it, and thereupon denied the motion for a rehearing, Frear, Chief Justice, dissenting.

From the decree of affirmance, Kaimiola Nakookoo Gray has appealed to this court.

Mr. David L. Withington, *Mr. J. Alfred Magoon* and *Mr. J. Lightfoot* for appellant.

Mr. William L. Stanley, *Mr. Clarence H. Olson* and *Mr. Henry Holmes* for appellee.

Mr. Justice Peckham, after making the foregoing statement, delivered the opinion of the court.

The sole question in this case is whether property which belonged to testatrix in her lifetime, and was situated outside

of the leper island, or settlement, at the time of her death passed by her will.

The appellant asserts that the translation of the will, although made by one and adopted by both courts below without opposition, and offered on her part in this proceeding, both in the trial court and upon review, is, nevertheless, inaccurate; that the translation which she submitted in her motion for a rehearing, as contained in certain *ex parte* affidavits, is the more accurate of the two, and if it were adopted the original will in such case, as so translated, would not dispose of any property which belonged to the testatrix at the time of her death, situated outside of the leper settlement; and, as no executor was appointed in the will, the petition of the appellant for the appointment of an administrator with the will annexed as to all outside property of which the testatrix died intestate should, as she claims, have been granted, and to that end the order should be reversed.

What is the correct English translation of the original will in this case, written in the Hawaiian language, is a pure question of fact.

The record shows that Judge Kepoikai, judge of the probate branch of the Circuit Court, Second Circuit, himself translated, at least in part, the will now before us for construction. The record discloses no objection or opposition to such translation, or any criticism of its accuracy at that time. The Supreme Court, on appeal, used the same translation, without criticism or opposition, as had been used by the trial court, and, upon that translation, affirmed the decree. Mr. Justice Hartwell, in writing the opinion of the Supreme Court, said: "The original of the will shows more clearly than does the evidently defective translation that the intention was to dispose of 'also all the other property known to be mine.' The decedent evidently knew well what her property at Kalaupapa was, and there is no reason to suppose she did not know of the property in Honolulu." So that whether the translation adopted by the court below and the Supreme Court was defective or not, the

view of the latter court was that a correct translation showed the intention of the testatrix to dispose of all her property, or, as the court said, "also all the other property known to be mine."

As the two courts below have determined the question of fact, we follow our usual course in such cases and adopt the translation of the will which they have adopted.

The legal question then arising is, what did the testatrix mean by her will? Her intention is to be derived from her language, and we are of opinion that the lower court was correct in its construction as given to us.

A perusal of the will as translated and adopted by the courts below leaves us in no doubt that the testatrix's intention was to give to her husband, not only the property which she left situated at Kalaupapa, but also all other property owned by her, wherever it might be situated and whatever it might be. We do not think she intended to die intestate as to any portion of her property, or to limit her bounty to her husband to such property only as was situated at Kalaupapa.

The decree of the Supreme Court of the Territory is therefore

Affirmed.